SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 717

LOUISVILLE JOINT STOCK LAND BANK,
PETITIONER,

vs.

WILLIAM W. RADFORD, SR.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 11, 1935.

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF KENTUCKY.
PADUCAH DIVISION.

In Bankruptcy.

In Re

William W. Radford, Senior,

Petitioner.

Be it remembered that heretofore on the 25th day of July, 1933, there was filed in the office of the Clerk of the above named Court, a petition in words and figures as follows:

PETITION OF FARMERS FOR THE APPOINTMENT OF CONCILIATION COMMISSIONER.

To the Honorable Charles I, Dawson,

Judge of the District Court of the United States for the Western District of Kentucky:

The petition of R. E. Dowlen, W. P. Davie, E. C. Radford, W. W. Radford, C. H. Summerhill, J. L. Rives, B. P. Eubank, R. H. Rives, Roy M. Milan, R. E. Jagoe, G. H. Warfield, F. W. Hampton, Theodore R. Troendle, Cherry Bros., Mrs. & H. Giles, W. A. McKinzie, respectfully represents:

That each of your petitioners is personally bona fide engaged in farming operations or derives the principal part of his income from farming operations, as more fully set forth with respect to each petitioner in the schedules hereto annexed and made a part hereof marked exhibits ..... respectively;

That the farming operation of each of your petitioners occur in the county of Christian, in said district; that each of your petitioners is insolvent or unable to meet his debts as they mature, and that each intends, if a conciliation commissioner for said county is appointed, to file a petition for relief under section 75 of the Bankruptcy Act.

Wherefore your petitioners pray that a conciliation commissioner for said county be appointed as provided in said section.

Name	Address
R. E. Dowlen,	Hopkinsville, Ky.
W. P. Davie,	Herndon, Ky.
W. W. Radford,	Howell, Ky.
C. H. Summerhill,	Oak Grove, Ky.
J. L. Rives,	Pembroke, Ky., R. F. D. 2.
B. P. Eubank,	Hopkinsville, Ky., R. #1.
R. H. Rives,	Hopkinsville, Ky., R. #1.
Roy M. Milan,	Oak Grove, Ky., R. F. D. 2.
R. E. Jagoe,	Oak Grove, Ky.
G. H. Warfield,	Hopkinsville, Ky.
F. W. Hampton,	Pembroke, Ky.
Mrs. Sallie J. Mimms,	Pembroke, Ky.
W. A. McKinzie,	Oak Grove, Ky.
Theodore R. Troendle,	Pembroke, Ky.
Cherry Bros.,	Hopkinsville, Ky., R. #1.
Mrs. Lula Giles & Howard Giles,	Herndon, Ky.
E. C. Radford,	Hopkinsville, Ky.

(Form of verification to be signed by each petitioner:)

United States of America,
District of ....., ss:

I (or we), ..., who executed the foregoing petition, do hereby make solemn oath that the statements contained therein are true to the best of my (or our) knowledge, information, and belief.

(Signatures:)

Subscribed and sworn to before me this 22 day of July, A. D. 1933.

Fred Boulter,
Notary Public.

(Seal) (Official character)

And thereupon the above named Court did enter an order in words and figures as follows:

ORDER—Entered July 25, 1933.

This day came R. E. Dowlen, W. P. Davie, W. W. Radford, E. C. Radford, C. H. Summerhill, J. L. Rives, B. P. Eubank, R. H. Rives, Roy M. Milan, R. E. Jagoe, G. H. Warfield, F. W. Hampton, Theodore R. Troendle, Mrs. Lula Giles and Howard Giles, Cherry Brothers and W. A. McKinzie and tendered their petition, stating that they are each residents of Christian County, Kentucky, farmers and insolvent, and desire to avail themselves of the provisions of Section 75 of the Bankruptcy Act, as amended by the Act of March 3, 1933, and asking that a conciliation commissioner be appointed under Section 75 of said Act, which petition is ordered filed; and the court being advised,—

It Is Ordered that Alvin H. Clark be and he is hereby appointed Conciliation Commissioner for said County of Christian, State of Kentucky. He shall execute bond in the sum of Five Thousand Dollars ($5,000.00), with surety to be approved by the court, and shall faithfully discharge the duties of his office and take the oath prescribed by Section 16, Title 5 U. S. C.

Chas. I. Dawson,
Judge.

ORDER—Entered August 15, 1933.

By an order duly entered on July 25th, 1933, Alvin H. Clark was appointed conciliation commissioner for Christian County, Kentucky, on petition of R. E. Dowlen and sixteen other farmers, in accordance with provisions of the amendment to the Bankruptcy Act of March 3rd, 1933, but the said Alvin H. Clark having declined said appointment—

It is now Ordered that J. Charles Fleming of Hopkinsville, Kentucky, be and he is hereby appointed conciliation commissioner for said County of Christian, State

Order

of Kentucky. He shall execute bond in the sum of Five Thousand Dollars, ($5,000.00), with surety to be approved by the Court, conditioned that he shall faithfully discharge the duties of this office and before entering upon the discharge thereof, he will also take the oath prescribed by Section 16, Title 5, U. S. C.

Chas. I. Dawson,
Judge.

I, J. Charles Fleming, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

J. Chas. Fleming.

Subscribed and sworn to before me this 19th day of August, 1933. Commission expires January 5, 1935.

Kate T. Boyd,
Notary Public, Christian Co. Ky.

(Seal)

In the Matter of
J. Chas. Fleming,
Conciliation Commissioner.

J. Chas. Fleming having been appointed Conciliation Commissioner of Christian County, Kentucky, and required to give bond for the faithful discharge of his duties in the sum of Five Thousand Dollars ($5,000.00), now comes said J. Chas. Fleming, with The Aetna Casualty & Surety Co. as his surety, and tenders a bond in the aforesaid sum, conditioned according to law, which bond is examined and approved by the Court, so endorsed by the Judge and ordered to be filed in the Clerk's office as a part of the record in this matter.

Chas. I. Dawson, Judge.

August 30th, 1933.

ORDER REDUCING BOND OF J. CHAS. FLEMING—
Entered June 28, 1934.

It Is Ordered by the Court that the order fixing the bond of J. Chas. Fleming, Conciliation Commissioner, at $5,000.00, be and it is hereby modified so that said conciliation commissioner may execute such bond, conditioned according to law, in the sum of $1,500.00.

Chas. I. Dawson, Judge.

June 28th, 1934.

BOND.

THE AETNA CASUALTY AND SURETY COMPANY.

(Emblem)

Hartford, Connecticut.
Morgan B. Brainard,
President.

Know All Men By These Presents: That we, J. Charles Fleming of Hopkinsville, Christian County, Kentucky, as principal, and The Aetna Casualty and Surety Company, of Hartford, Connecticut, as surety are held and firmly bound unto the United States of America, in the sum of Five Thousand and No/100 ($5,000.00) Dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Signed, sealed and dated this 24 day of August, 1933.

The condition of this obligation is such that whereas the said J. Charles Fleming has been on the 15th day of August, A. D. 1933, appointed by the Honorable Chas. I. Dawson, a conciliation commissioner under Section

75 of the Bankruptcy Act, in and for the County of Christian, in said district.

Now, Therefore, if the said J. Charles Fleming shall well and faithfully discharge and perform all the duties pertaining to the said office of conciliation commissioner, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of

J. Chas. Fleming,

The Aetna Casualty and Surety Company,

By Jno. R. Falconer,
Resident Vice President,

Attest: M. A. Korb,
Resident Assistant Secretary.

(Seal)

Approved this 30 day of Aug., 1933.

Chas. I. Dawson,
District Judge.

ORDER APPROVING BOND OF J. CHAS. FLEMING, CONCILIATION COMMISSIONER—Entered June 29, 1934.

J. Chas. Fleming having been appointed Conciliation Commissioner and required to give bond for the faithful discharge of his duties in the sum of $1,500.00, said bond having been reduced from $5,000.00, now comes said J. Chas. Fleming, with the American Surety Co. of New York, as surety, and tenders a bond in the aforesaid sum, conditioned according to law, which bond is examined and approved by the Court, so endorsed by the Judge and ordered to be filed in the Clerk's office as a part of the record.

This bond is in lieu of the bond of $5,000.00, with the Aetna Casualty & Surety Co. as surety, which bond has heretofore been cancelled.

Chas. I. Dawson,
Judge.

BOND OF CONCILIATION COMMISSIONER
—Filed June 29, 1934, Lilburn Phelps, Clerk.

Know all men by these presents: That we, John Charles Fleming, of Hopkinsville, Ky., as principal, and American Surety Company, of New York, as surety, are held and firmly bound to the United States of America, in the sum of Fifteen Hundred dollars ($1,500), lawful money of the United States, to be paid to the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this the 28th day of May, A. D. 1934.

The condition of this obligation is such that whereas the said John Charles Fleming has been on the 28th day of May, A. D. 1934, appointed by the Honorable Chas. I. Dawson, judge of the District Court of the United States for the Western District of Kentucky, a conciliation commissioner under section 75 of the Bankruptcy Act, in and for the county of Christian, in said district:

Now, therefore, if the said John Charles Fleming shall well and faithfully discharge and perform all the duties pertaining to the said office of conciliation commissioner, then this obligation to be void; otherwise to remain in full force and virtue.

Bond of Conciliation Commissioner

Signed and sealed in the presence of—
J. Chas. Fleming,
American Surety Company of New York,
O. L. C. Radford, Res. Vice President,
V. Fenger, Res. Asst. Secy.
B#868563D
(Seal)

Countersigned at Hopkinsville, Ky.
By John W. Winfree.

Approved this the 29th day of June, 1934.
Chas. I. Dawson,
District Judge.

Thereafter, on February 26, 1934, the petitioner herein filed a debtor's petition in the office of the Clerk of the above named Court in words and figures as follows:

DEBTOR'S PETITION—Filed February 26, 1934.

To the Honorable Charles I. Dawson,

Judge of the District Court of the United States for the Western Western District of Kentucky.

The Petition of William W. Radford, Sr., of Hopkinsville, in the County of Christian, and district and State of Kentucky,

Respectfully Represents: That he is personally bona fide engaged primarily in farming operations; that such farming operations occur in the county of Christian, within said judicial district; that he is insolvent and unable to meet his debts as they mature; and that he desires to effect a composition or an extension of time to pay his debts under Section 75 of the Bankruptcy Act.

Debtor's Petition

That the schedule hereto annexed, marked "A," and verified by your petitioner's oath, contains a true and full statement of all his debts, and the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B," and verified by your petitioner's oath, contains a full and accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore your petitioner prays that his petition may be approved by the court and proceedings had in accordance with the provisions of said section.

William W. Radford, Sr.

United States of America, District of Kentucky, ss:

I, William W. Radford, the foregoing petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge and belief.

William W. Radford, Sr.

Subscribed and sworn to before me this 18th day of September, A. D. 1933.

Kate T. Boyd,
Notary Public Christian Co. Ky.

(Seal of Notary)

(By agreement of counsel, the schedules attached to the foregoing petition are omitted from this record and it is stipulated that said schedules set forth the mortgage debt to Louisville Joint Stock Land Bank as is set forth in its answer.)

And thereupon the following orders were made and entered of record in this proceeding.

ORDER—Entered February 27, 1934.

At Louisville, in said district, on the 27th day of February A. D. 1934, before Chas. I. Dawson, Judge of said court, the petition of William W. Radford, Sr., praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act, having been heard and duly considered, is approved as properly filed under said section.

Chas. I. Dawson,
Judge.

ORDER—Entered February 27, 1934.

Whereas the petition of William W. Radford, Sr., filed in this Court on the 26th day of February, A. D. 1934, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act, having been duly approved by order of this court on the 27th day of February A. D. 1934, it is therefore ordered, that said matter be referred to J. Chas. Fleming, one of the conciliation commissioners of this court, to take such further proceedings therein as are required by said section; and that the said William W. Radford shall attend before said conciliation commissioner at such time and place as he shall designate and thence forth shall submit to such orders as may be made by said conciliation commissioner, or by this court relating to the proceedings under said section.

Chas. I. Dawson,
Judge.

And thereafter on November 10, 1934, an order was made and entered of record in said proceeding as follows:

ORDER—Entered November 10, 1934.

The Court, being advised in the premises, does grant leave to the petitioner to file a second amended and substituted petition herein, which said second amended and substituted petition is accordingly filed without prejudice to any rights and subject to the exception of Louisville Joint Stock Land Bank of Louisville, Kentucky.

Louisville Joint Stock Land Bank files its answer to the second amended and substituted petition of the petitioner herein, and said petitioner files his replication to the answer of Louisville Joint Stock Land Bank of Louisville, Kentucky, to the second amended petition and substituted petition of the petitioner herein.

Chas. I. Dawson,
District Judge.

SECOND AMENDED AND SUBSTITUTED PETITION OF THE PETITIONER, RADFORD—Filed November 10, 1934.

Now on this day comes the petitioner, Radford, and files this his second amended and substituted petition herein, the same to be in lieu of and a substitute for his first amended petition, so that said first amended petition as amended by the second amended and substituted petition herein filed shall read as follows:

(1) Heretofore prior to the filing of the original petition herein, fifteen farmers of Christian County, Kentucky, did certify that they intended to file petitions under Section 75 of the National Bankruptcy Act, approved March 3, 1933, and did request this Court to appoint for such County one Referee to be known as a Conciliation Commissioner. Thereupon, in accordance with said petition, this Court did appoint J. Charles

Fleming, as the Conciliation Commissioner within and for Christian County, Kentucky.

(2) On February 26, 1934, the petitioner, Radford, filed his petition in which he alleged that he was personally bona fide engaged primarily in farming operations; that such farming operations occurred in the County of Christian within said Judicial District; that he was insolvent and unable to meet his debts as they matured and that he desired to effect a composition or an extension of time in which to pay his debts under Section 75 of the Bankruptcy Act. The said petition was accompanied by the schedules of the petitioner required by law. And thereupon, the petitioner in his original petition herein prayed that his petition might be approved by the Court and that proceedings might be had in accordance with the provisions of said Section 75.

(3) Heretofore, prior to the filing of the original petition herein, the petitioner, Radford, herein was and still is a farmer, within the true intent and meaning of Section 75, National Bankruptcy Act, as enacted March 3, 1933, and as amended June 28, 1934; that for the greater part of the six months preceding the date of the original petition herein, the petitioner, Radford, resided and had his domicile in the County of Christian, in the State of Kentucky, and in the Western District thereof; and at the date of the original petition herein, the petitioner, Radford, was and still is insolvent and unable to pay his debts as they matured; that at the date of the original petition herein, it was and still is desirable to effect a composition and an extension of time in which to pay the debts of the petitioner, Radford.

(4) Upon the filing of the original petition herein, the Court did enter an order approving said petition as properly filed under Section 75, National Bankruptcy Act, and did refer said petition and the subsequent proceedings thereon to J. Charles Fleming, as a Conciliation Commissioner of this Court within and for the County aforesaid.

(5) After the filing of such petition, the said petitioner, Radford, did, within the time and in such form as the rules of this Court provide, file an inventory of his estate.

(6) Whereupon, the Conciliation Commissioner did call the first meeting of creditors of the said Radford, stating in the notice of said meeting that the said Radford proposed to offer terms of composition or extension

and did enclose with the notice a summary of the inventory a brief statement of the farmer's indebtedness as shown by the schedules and a list of the names and addresses of the secured creditors and unsecured creditors with the amounts owing to each as shown by the schedules.

(7) Thereupon, at the first meeting of the creditors of the said Radford, held March 23, 1934, the said Radford was examined in the manner required by law and submitted a composition and extension proposal.

Thereupon, the said Radford did fail, and has continued to fail, to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by the composition or extension proposal, which said composition or extension proposal was made by the said Radford.

Wherefore, the said Radford respectfully prays

(a) That he may be adjudged a bankrupt herein and that such further proceedings be had herein as are provided by Subsection S of Section 75 of the National Bankruptcy Act.

(b) That all of his property, whether pledged, encumbered by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of all the remainder of his property and pay for the same under the terms and conditions set forth in Paragraph 3 of Subsection S of Section 75 of the National Bankruptcy Act as amended June 28, 1934.

(c) That if the lienholder herein does refuse to consent to such retention of possession and the payment for such property upon such terms and conditions as hereinbefore set forth in Subdivision (b) of this prayer and does file written objections to the manner of payment and distribution of the said Radford's property, that in accordance with Subdivision 7 of Subsection S of Section 75 of the National Bankruptcy Act, the Court, after having set aside the said Radford's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years during which five years the said Radford shall retain possession of all his property under the control of the Court, provided the said Radford, as provided by law, pays a reasonable rental annually for that part of the property of which he retains possession and that at the end of the said period of five years, or at any time prior thereto, the said Radford may pay into Court, in the manner provided by law, the appraised

value of the property of which he retains possession and that he may apply for his discharge as provided by Paragraph 7 of Subsection S of Section 75 of the National Bankruptcy Act.

William W. Radford, Sr.,
Petitioner.

David A. Sachs, Jr.,
Frank Rives,
Edwin A. Krauthoff,
Attorneys for Petitioner.

State of Kentucky, }
County of Jefferson. } ss.

Edwin A. Krauthoff, being duly sworn, upon his oath states that he is the attorney for the petitioner herein and as such and for him makes this affidavit, the said petitioner being absent from Jefferson County, Kentucky, and that the matters and things set forth in the above second amended and substituted petition are true to the best of his knowledge and belief.

Edwin A. Krauthoff.

Subscribed and sworn to before me by Edwin A. Krauthoff this November 10, 1934.

My Commission expires Jan. 3, 1937.

Mary W. McCue,
Notary Public, Jefferson Co., Ky.

ANSWER OF LOUISVILLE JOINT STOCK LAND BANK TO SECOND AMENDED AND SUBSTITUTED PETITION—Filed November 10, 1934.

The Louisville Joint Stock Land Bank (hereinafter called the Bank) states as follows:

The Bank is, and at all times hereinafter mentioned was, a corporation organized and existing under that Act of Congress known as the Federal Farm Loan Act, with power to sue and be sued, to contract and be contracted with, and to lend money on first mortgages.

On or about August 2, 1922, W. W. Radford (hereinafter called Radford) and Nannie A. Radford, his wife (hereinafter called Mrs. Radford), for value received, signed, executed and delivered to the Bank a certain writing called a promissory note dated August 2, 1922, which said note was and is in words and figures as follows, to-wit:

Form L-12.

LOUISVILLE JOINT STOCK LAND BANK

LOUISVILLE, KY.

FIRST MORTGAGE NOTE

No. 71 $8,000.00

Howell, Kentucky, August 2, 1922.

For value received we promise to pay to the order of The Louisville Joint Stock Land Bank of Louisville, Kentucky, at its offices in the city of Louisville, Kentucky, the principal sum of Eight Thousand Dollars with interest from date on the whole amount of said principal sum remaining from time to time unpaid, at the rate of six per centum per annum, payments to be made on the amortization plan and in accordance with amortization tables promulgated by the Federal Farm Loan Board, said payments to be made in manner and form as follows: A preliminary interest payment to be made on the first day of March, 1923, being 6 per cent interest from date of this note until said time of payment and thereafter in sixty-five semi-annual payments of Two Hundred and Eighty Dollars each, payable on the first day of September & March in each year, and a final payment of Two Hundred Thirty-three & 50/100 Dollars, payable on the first day of March, 1956, and we further promise and agree to pay reasonable attorneys' fee in the event there is any default in the payment of this note as provided herein.

This instrument is negotiable and payable at The Louisville Joint Stock Land Bank at its offices in the city of Louisville, Kentucky, without any relief whatever from valuation or appraisement laws.

If any payment, or payments, herein provided for, are not paid when due, such defaulted payment, or payments, shall bear simple interest from the date of such default until paid at the highest rate of interest authorized by law, not exceeding eight per centum per annum.

The drawers and endorsers, and all parties to this instrument, severally waive presentment for payment, protest, notice of protest, notice of non-payment of this instrument, demand and all legal diligence in enforcing collection.

This note is secured by a deed of trust or mortgage of even date herewith, executed by W. W. Radford and Nannie A. Radford, his wife, to the said The Louisville Joint Stock Land Bank of Louisville, Kentucky, on lands in Christian County, Kentucky, which is the first lien on the property therein described. If any default be made in any of the payments provided for in this note, or in case of failure to perform any or either of the terms or conditions of said deed of trust or mortgage, the whole indebtedness secured by this deed of trust or mortgage, together with all interest on same shall, at the option of said The Louisville Joint Stock Land Bank, its successors, or assigns, become due and payable at once without demand or notice, notice of the exercise of such option being hereby expressly waived.

After five years from the date hereof, on any date when any regular installment becomes due hereunder, the maker or makers of this note shall have the option of making additional payments in the sum authorized by The Federal Farm Loan Act or any amendment thereof, for the reduction of the principal, or the payment of the entire principal, and any payment in reduction of principal so made shall be endorsed on this note. Such additional payments shall not reduce the fixed annual, or semi-annual, payments, provided for herein, but will pay off the loan at an earlier date. Whenever the whole principal hereof, together with all interest accrued thereon, shall have been fully paid, then all provisions herein for installment payments maturing thereafter shall be null and void and this note shall then be fully paid off and satisfied.

(signed) W. W. Radford,
(signed) Nannie A. Radford.

TREASURY DEPARTMENT
FEDERAL FARM LOAN BUREAU
Form 1325—80

Rate 6% | **Semiannual Installments $280.00** | **Final Installment $233.50** | **Principal $8,000.00**

AMORTIZATION TABLE

Year due	No.	Interest	Principal	Date Paid	Initial	Balance
1923	p	278.00		2-27		
1923	1	$240.00	$40.00	8-27	S	$7960.00
1924	2	238.80	41.20	3-1	C	7918.80
1924	3	237.56	42.44	8-30	C	7876.36
1925	4	236.29	43.71	3-9	C	7832.65
1925	5	234.98	45.02	9-18	B	7787.63
1926	6	233.63	46.37	3-1	C	7741.26
1926	7	232.24	47.76	2-19	C	7693.50
1927	8	230.81	49.19	2-26	S	7644.31
1927	9	229.33	50.67	8-23	S	7593.64
1928	10	227.81	52.19	2-5	S	7541.45
1928	11	226.24	53.76	9-11	M	7487.69
1929	12	224.63	55.37	2-8	M	7432.32
1929	13	222.97	57.03	8-29	M	7375.29
1930	14	221.26	58.74	8-19	M	7316.55
1930	15	219.50	60.50	9-15	M	7256.05
1931	16	217.68	62.32	4-3	M	7193.73
1931	17	215.81	64.19	9-9	M	7129.54
1932	18	213.89	66.11	3-18	M	7063.43
19...	19	211.90	68.10	.....	....	6995.33
19...	20	209.86	70.14	.....	....	6925.19
19...	21	207.76	72.24	.....	....	6852.95
19...	22	205.59	74.41	.....	....	6778.54
19...	23	203.36	76.64	.....	....	6701.90
19...	24	201.06	78.94	.....	....	6622.96
19...	25	198.69	81.31	.....	....	6541.65
19...	26	196.25	83.75	.....	....	6457.90
19...	27	193.74	86.26	.....	....	6371.64
19...	28	191.15	88.85	.....	....	6282.79
19...	29	188.48	91.52	.....	....	6191.27
19...	30	185.74	94.26	.....	....	6097.01
19...	31	182.91	97.09	.....	....	5999.92
19...	32	180.00	100.00	.....	....	5899.92
19...	33	177.00	103.00	.....	....	5796.92
19...	34	173.91	106.09	.....	....	5690.83
19...	35	170.72	109.28	.....	....	5581.55
19...	36	167.45	112.55	.....	....	5469.00
19...	37	164.07	115.93	.....	....	5353.07
19...	38	160.59	119.41	.....	....	5233.66
19...	39	157.01	122.99	.....	....	5110.67
19...	40	153.32	126.68	.....	....	4983.99

AMORTIZATION TABLE

Year Due	No.	Interest	Principal	Date paid	Initial	Balance
19...	41	$149.52	$130.48	.....	....	$4853.51
19...	42	145.60	134.40	.....	....	4719.11
19...	43	141.57	138.43	.....	....	4580.68
19...	44	137.42	142.58	.....	....	4438.10
19...	45	133.14	146.86	.....	....	4291.24
19...	46	128.74	151.26	.....	....	4139.98
19...	47	124.20	155.80	.....	....	3984.18
19...	48	119.52	160.48	.....	....	3823.70
19...	49	114.71	165.29	.....	....	3658.41
19...	50	109.75	170.25	.....	....	3488.16
19...	51	104.64	175.36	.....	....	3312.80
19...	52	99.38	180.62	.....	....	3132.18
19...	53	93.96	186.04	.....	....	2946.14
19...	54	88.38	191.62	.....	....	2754.52
19...	55	82.63	197.37	.....	....	2557.15
19...	56	76.71	203.29	.....	....	2353.86
19...	57	70.62	209.38	.....	....	2144.48
19...	58	64.33	215.67	.....	....	1928.81
19...	59	57.86	222.14	.....	....	1706.67
19...	60	51.20	228.80	.....	....	1477.87
19...	61	44.34	235.66	.....	....	1242.21
19...	62	37.27	242.73	.....	....	999.48
19...	63	29.98	250.02	.....	....	749.46
19...	64	22.48	257.52	.....	....	491.94
19...	65	14.76	265.24	.....	....	226.70
19...	66	6.80	226.70	.....	....	.....
19...	67	.....	.....	.....	....	.....
19...	68	.....	.....	.....	....	.....
19...	69	.....	.....	.....	....	.....
19...	70	.....	.....	.....	....	.....

71

(Interest payments ruled out are not paid.)

....., 19....

For value received we hereby guarantee the payment of the within note, according to the terms thereof, both as to principal and as to interest.

.....NATIONAL FARM LOAN ASSOCIATION.
By ....., Sec.-Treas.
By ....., President.

By said note Radford and Mrs. Radford, and each of them, agreed and promised to pay to the Bank the principal sum of $8,000 and interest at the rate of 6% per annum upon the amount of the principal sum remaining unpaid from time to time, and to pay the principal sum on the amortization plan which is set forth on the reverse side of said note.

To more fully secure the payment of said note, Radford and Mrs. Radford, on or about August 2, 1922, signed, executed, acknowledged and delivered to the Bank a certain writing called a mortgage, which was and is in words and figures as follows, to-wit:

MORTGAGE.

This Mortgage, made and entered into, this the 2nd day of August 1922, by and between W. W. Radford and Nannie A. Radford, his wife, of Christian County, Kentucky, parties of the first part, and The Louisville Joint Stock Land Bank, a corporation duly incorporated and existing under The Federal Farm Loan Act, the principal office and postoffice address of which is Louisville, Jefferson County, Kentucky, party of the second part,

Witnesseth: That the said parties of the first part in consideration of Eight Thousand Dollars, to them in hand paid and loaned by the party of the second part, the receipt of which is hereby acknowledged, do by these presents convey and mortgage unto the said party of the second part, its successors and assigns, the following described real estate, with its rents, issues and profits, situated in Christian County and State of Kentucky, more particularly described as follows:

Located 12 miles south of Hopkinsville on the Palmyra Road.

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of

said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893 from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustee of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93 3/8 acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book, 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jesse Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid.

The Parties Of The First Part further agree that any and all royalties or moneys coming to them or any of them, directly or indirectly, from any and all coal, oil, gas or other mineral rights leased, granted, sold, reserved, or contracted, shall belong to and be paid to the party of the second part at its option and shall be applied to the reduction of the principal of the loan hereby secured.

The Parties Of The First Part further agree that any and all moneys due and payable to them, or any of them, in settlement of any and all damages accruing by reason of any and all leases now on or which may be placed on the above real estate during the term of this mortgage, shall belong to and be paid to the party of the second part at its option and shall be applied to the reduction of the principal of the loan hereby secured.

This Mortgage is given to secure said loan made by the party of the second part to the parties of the first part as is evidenced by a first mortgage note duly executed and delivered by W. W. Radford and Nannie A. Radford, his wife, to the party of the second part, and payable to its order; said note being in said principal sum of Eight Thousand Dollars, and bearing interest on same at the rate of six per centum per annum, payments to be made on the amortization plan in accordance with the terms and conditions of said first mortgage note, which is made a part of this mortgage as fully as if wholly written herein.

The Parties Of The First Part hereby expressly warrant the title to said real estate and further expressly covenant that they have a good right to sell, convey and mortgage the same; that same is free from all encumbrances, prior to, or on an equality with this mortgage, that they have a good and perfect title to the same against all persons whomsoever and that this mortgage is and shall be the first and best lien against said premises.

The Parties Of The First Part further convenant and agree with the party of the second part:

First, That they will pay, when due, all taxes, liens, judgments or assessments which may be lawfully assessed against the property hereby mortgaged and all charges of every character against the same and any such taxes, liens, judgments, assessments or charges, not paid when due, may be paid by the mortgagee and when so paid shall become immediately due to the party of the second part, shall become a part of the mortgage debt and shall bear simple interest at the rate of six per centum per annum until paid. The parties of the first

part further agree, immediately upon the payment of same, to furnish to the party of the second part receipts of the proper officers or parties, for all such payments, and it is agreed that all irregularities and defects in the levy or assessment and the right to insist that the personal property be first exhausted in the payment of such taxes and assessments are hereby expressly waived, and the receipt of the proper officers shall be conclusive evidence as to the amount and validity of such payments. The parties of the first part will, during the term of this mortgage, duly assess said real estate for taxation at the time prescribed by law.

Second, That the whole and every portion of said loan shall be expended only for the purposes specified in the original application, which application is hereby made a part of this mortgage the same as if fully copied herein, except that the party of the second part may permit said loan to be used for any other purpose authorized by the Federal Farm Loan Act, said permission to be given in writing only.

Third, That said loan is to be repaid on an amortization plan by means of a fixed number of annual, or semi-annual, installments sufficient to cover the charges and amounts to be applied on the principal, as provided in, and required by, The Federal Farm Loan Act as is fully provided for in said first mortgage note.

Fourth, To take good care of said real estate and not to commit waste, or allow the same to be committed on said premises, but will cause the same to be worked and cultivated in a proper and farmer-like manner at all times and will not cut or remove any timber or improvements from said land, except such as may be needed for ordinary farming purposes, and shall keep said lands in as good condition for farming purposes as they are now in and will keep the houses, fences and other improvements on said land in good condition and repair at all times.

Fifth, To pay all expenses incurred by the party of the second part in securing abstracts of title and for attorneys' fees in protecting the security of this mortgage, or in foreclosing the same, together with all necessary expenses pertaining thereto, all of which amounts shall become due when paid, shall become part of this mortgage, and shall bear interest at six per centum per annum from the time same shall be paid by the party of the second part until the party of the second part shall be fully repaid the same. In case of foreclosure all of said expenses may be made a part of the judgment.

Sixth, That upon the institution of proceedings to foreclose this mortgage the plaintiff shall be entitled to have a receiver appointed by the Court to take possession and control of the premises, to collect the rents and profits, and to put said premises in good repair suitable for farming.

Seventh, To keep the buildings upon said premises insured against loss or damage by fire in some good, reliable insurance company or companies, to be approved by the party of the second part, its successors or assigns, to the amount of not less than One Thousand Dollars, with loss, if any, payable to said party of the second part, its successors or assigns, as its, or their, interest may appear at time of loss, and forthwith upon issue shall deposit said policy with said party of the second part, its successors or assigns. In the event the parties of the first part shall fail to furnish or pay for said insurance, then the party of the second part shall have the right to procure and pay for said insurance; and unless the parties of the first part shall immediately reimburse the party of the second part therefor, then the party of the second part shall have the right at any time to declare the note secured by this mortgage due and payable.

In The Event there is any default of any amortization payment called for herein, or any part thereof, or any delinquent taxes against the land covered by this mortgage, or the parties of the first part fail to insure and keep the premium paid on the buildings situated on the land described herein, then it is agreed by the parties of the first part that any second lienholder, or any party or parties directly or indirectly interested in this loan, may then pay such amortization payment, taxes or insurance premium, and are hereby given a lien on the property described herein, subject to the lien of The Louisville Joint Stock Land Bank, to secure the amount of any such payment or payments, with interest thereon from the date of the payment so made and the cost of enforcing its lien. It is further agreed by the parties of the first part that in the event any one or more of the parties mentioned in this paragraph pay any amortization payment, delinquent taxes or past due insurance premium, as set out herein, then such party or parties are to have the option to immediately enforce the lien to the amount of such payment and sell the property described herein, subject to the lien of The Louisville Joint Stock Land Bank, in satisfaction of such payment or payments, interests and costs. It is further agreed by

parties of the first part that in the event default is made in any amortization payment, taxes due on the property described herein, or insurance premium due on the buildings situated upon the land described herein, and there is a foreclosure of same by the party making such payments, then The Louisville Joint Stock Land Bank has an option to declare due and payable its note secured by this mortgage and may enforce its lien and sell said property at the same time it is sold by any such party making such payment or payments.

This Mortgage and the note secured thereby are executed and delivered under and in accordance with the same Federal Farm Loan Act, and are subject to all the terms, conditions and provisions thereof, which Act is made a part hereof the same as if set out in full herein.

The Condition Of This Mortgage is, that if the parties of the first part shall well and truly make all the payments called for in said first mortgage note in accordance with its terms and tenor and shall perform each and every one of the convenants, conditions and agreements, either in said note or this mortgage contained, then the same shall be null and void, but if the parties of the first part shall, in any wise be in default in respect to any of such payments, or in respect to the performance of any of the conditions, covenants or agreements in said note or this mortgage contained, then the whole indebtedness provided for herein or in said note, together with all interest on same, all of which is hereby secured by this mortgage, shall, at the option of the said The Louisville Joint Stock Land Bank, its successors or assigns, become due and payable forthwith without demand or notice, notice of exercise of such option being hereby expressly waived, and same may be immediately collected by suit to enforce the same.

When This Mortgage shall have been fully paid off in accordance with its terms and tenor, then same shall be duly released by the party of the second part, but all legal fees pertaining to such release shall be paid by the parties of the first part.

In Testimony whereof, witness the hand of the parties of the first part this the day and date first above written.

(Signed) W. W. Radford,
" Nannie A. Radford.

State of Kentucky,
Christian County.

I, L. E. Dixon, a Notary Public, in and for the County and State aforsaid do certify that on this day the foregoing mortgage from W. W. Radford and Nannie A. Radford, his wife, to The Louisville Joint Stock Land Bank was produced to me and was acknowledged and delivered by W. W. Radford and Nannie A. Radford, his wife, parties thereto to be their act and deed.

Witness my hand this the 3rd day of August, 1922.

L. E. Dixon,
Notary Public, Christian County, Ky.
(Official Designation)

My commission expires Jan. 21—

Said mortgage was duly recorded on August 9, 1922 in Mortgage Book 110, page 345, in the Christian County Court Clerk's office, and constitutes a lien on the mortgaged real estate described therein, and the rents and profits therefrom, prior and superior to all other interests in, claims and liens on said mortgaged property.

The Bank is the owner and holder of said note and mortgage and at all times herein mentioned was the owner and holder thereof.

Radford and Mrs. Radford paid the installments due on said note to and including the installment due on March 1, 1932, but failed and refused to pay, and have not paid, the installments due on September 1, 1932, March 1, 1933, September 1, 1933 and March 1, 1934, or any part thereof, or any interest thereon, except a payment of $9.55 interest made on December 24, 1932. The said installments which were paid were respectively paid on the dates set opposite the installment on the reverse side of said note.

On or about January 30, 1924, Radford and Mrs. Radford, for value received, signed, executed and delivered to the Bank a certain writing called a promissory note dated January 30, 1924, which note was and is in words and figures as follows, to-wit:

Form L-12.

LOUISVILLE JOINT STOCK LAND BANK

LOUISVILLE, KY.

FIRST MORTGAGE NOTE $1,000.00

No. 1204

Howell, Kentucky, January 30, 1924.

For value received we promise to pay to the order of The Louisville Joint Stock Land Bank of Louisville, Kentucky, at its offices in the city of Louisville, Kentucky, the principal sum of One Thousand Dollars with interest from date on the whole amount of said principal sum remaining from time to time unpaid, at the rate of six per centum per annum, payments to be made on the amortization plan and in accordance with amortization tables promulgated by the Federal Farm Loan Board, said payments to be made in manner and form as follows: A preliminary interest payment to be made on the first day of March, 1924, being 6 per cent interest from date of this note until said time of payment and thereafter in sixty-five semi-annual payments of Thirty-five and no/100 Dollars each, payable on the first day of September & March in each year, and a final payment of Twenty-Nine & 23/100 Dollars, payable on the first day of March, 1957, and we further promise and agree to pay reasonable attorneys' fee in the event there is any default in the payment of this note as provided herein.

This instrument is negotiable and payable at The Louisville Joint Stock Land Bank at its offices in the city of Louisville, Kentucky, without any relief whatever from valuation or appraisement laws.

If any payment, or payments, herein provided for, are not paid when due, such defaulted payment, or payments, shall bear simple interest from the date of such default until paid at the highest rate of interest authorized by law, not exceeding eight per centum per annum.

The drawers and endorsers, and all parties to this instrument, severally waive presentment for payment, protest, notice of protest, notice of non-payment of this instrument, demand and all legal diligence in enforcing collection.

This note is secured by a mortgage of even date herewith, executed by W. W. Radford and Nannie A. Radford, his wife to the said The Louisville Joint Stock Land Bank of Louisville, Kentucky, on lands in Christian County, Kentucky, which is the first lien on the property therein described. If any default be made in any of the payments provided for in this note, or in case of failure to perform any or either of the terms or conditions of said mortgage, the whole indebtedness secured by this mortgage, together with all interest on same shall, at the option of said The Louisville Joint Stock Land Bank, its successors, or assigns, become due and payable at once without demand or notice, notice of the exercise of such option being hereby expressly waived.

After five years from the date hereof, on any date when any regular installment becomes due hereunder, the maker or makers of this note shall have the option of making additional payments in the sum authorized by The Federal Farm Loan Act or any amendment thereof, for the reduction of the principal, or the payment of the entire principal, and any payment in reduction of principal so made shall be endorsed on this note. Such additional payments shall not reduce the fixed annual, or semi-annual, payments, provided for herein, but will pay off the loan at an earlier date. Whenever the whole principal hereof, together with all interest accrued thereon, shall have been fully paid, then all provisions herein for installment payments maturing thereafter shall be null and void and this note shall then be fully paid off and satisfied.

(signed) W. W. Radford,

(signed) Nannie A. Radford.

TREASURY DEPARTMENT
FEDERAL FARM LOAN BUREAU
Form 1325

Rate 6%	Semiannual Installments 35.00	Final Installment 29.23	Principal 1,000.00

AMORTIZATION TABLE

Year Due	No.	Interest	Principal	Date paid	Initial	Balance
1924	p	5.00	.....	3-1	C	.....
1924	1	30.00	5.00	8-30	C	995.00
1925	2	29.85	5.15	3-2	C	989.85
1925	3	29.70	5.30	9-18	B	984.55
1926	4	29.54	5.46	3-1	C	979.09
1926	5	29.37	5.63	8-19	C	973.46
1927	6	29.20	5.80	2-26	S	967.66
1927	7	29.03	5.97	8-23	S	951.69
1928	8	28.85	6.15	3-25	S	955.54
1928	9	28.67	6.33	9-11	M	949.21
1929	10	28.48	6.52	2-8	M	942.69
19[illegible]	11	28.28	6.72	8-29	M	935.97
1930	12	28.08	6.92	2-19	M	929.05
1930	13	27.87	7.13	9-8	M	921.92
1931	14	27.66	7.34	4-34	M	914.58
1931	15	27.44	7.56	9-9	M	907.02
1932	16	27.21	7.79	3-1	M	899.23
1932	17	26.98	8.02	12-24	M	891.21
19...	18	.....	.....	.....	....	.....
19...	19	.....	.....	.....	....	.....
19...	20	.....	.....	.....	....	.....
19...	21	.....	.....	.....	....	.....
19...	22	.....	.....	.....	....	.....
19...	23	.....	.....	.....	....	.....
19...	24	.....	.....	.....	....	.....
19...	25	.....	.....	.....	....	.....
19...	26	.....	.....	.....	....	.....
19...	27	.....	.....	.....	....	.....
19...	28	.....	.....	.....	....	.....
19...	29	.....	.....	.....	....	.....
19...	30	.....	.....	.....	....	.....
19...	31	.....	.....	.....	....	.....
19...	32	.....	.....	.....	....	.....
19...	33	.....	.....	.....	....	.....
19...	34	.....	.....	.....	....	.....
19...	35	.....	.....	.....	....	.....
19...	36	.....	.....	.....	....	.....
19...	37	.....	.....	.....	....	.....
19...	38	.....	.....	.....	....	.....
19...	39	.....	.....	.....	....	.....
19...	40	.....	.....	.....	....	.....

AMORTIZATION TABLE

Year due	No.	Interest	Principal	Date Paid	Initial	Balance
19...	41	.....	.....	.....	....	.....
19...	42	.....	.....	.....	....	.....
19...	43	.....	.....	.....	....	.....
19...	44	.....	.....	.....	....	.....
19...	45	.....	.....	.....	....	.....
19...	46	.....	.....	.....	....	.....
19...	47	.....	.....	.....	....	.....
19...	48	.....	.....	.....	....	.....
19...	49	.....	.....	.....	....	.....
19...	50	.....	.....	.....	....	.....
19...	51	.....	.....	.....	....	.....
19...	52	.....	.....	.....	....	.....
19...	53	.....	.....	.....	....	.....
19...	54	.....	.....	.....	....	.....
19...	55	.....	.....	.....	....	.....
19...	56	.....	.....	.....	....	.....
19...	57	.....	.....	.....	....	.....
19...	58	.....	.....	.....	....	.....
19...	59	.....	.....	.....	....	.....
19...	60	.....	.....	.....	....	.....
19...	61	.....	.....	.....	....	.....
19...	62	.....	.....	.....	....	.....
19...	63	.....	.....	.....	....	.....
19...	64	.....	.....	.....	....	.....
19...	65	.....	.....	.....	....	.....
19...	66	.....	.....	.....	....	.....
19...	67	.....	.....	.....	....	.....
19...	68	.....	.....	.....	....	.....
19...	69	.....	.....	.....	....	.....
19...	70	.....	.....	.....	....	.....

1204

(Interest payments ruled out are not paid.)

....., 19....

For value received we hereby guarantee the payment of the within note, according to the terms thereof, both as to principal and as to interest.

.....NATIONAL FARM LOAN ASSOCIATION.

By ....., Sec.-Treas.

By ....., President.

By said note Radford and Mrs. Radford, and each of them, agreed and promised to pay to the Bank the principal sum of $1,000 with interest at the rate of 6% per annum upon the amount of the principal sum remaining unpaid from time to time, and to pay the principal sum on the amortization plan which is set forth on the reverse side of said note.

To more fully secure the payment of the said note, Radford and Mrs. Radford, on or about January 30, 1924, signed, executed, acknowledged and delivered to the Bank a certain writing called a mortgage which was and is in words and figures as follows, to-wit:

MORTGAGE.

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Witnesseth: That the said parties of the first part in consideration of One Thousand Dollars, to them in hand paid and loaned by the party of the second part, the receipt of which is hereby acknowledged, do by these presents convey and mortgage unto the said party of the second part, its successors and assigns, the following described real estate, with its rents, issues and profits, situated in Christian County and State of Kentucky, more particularly described as follows:

Located 12 miles south of Hopkinsville on the Palmyra Road.

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of

said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893 from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said trac which was conveyed by W. W. Radford and wife to the trustees of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93 3/8 acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book, 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jessie Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid.

It is understood and agreed by the parties hereto that this mortgage shall stand on an equality with another mortgage for $8,000.00 between the same parties, dated the 2nd day of August 1922, recorded in Deed Book 110, page 345, in the aforesaid office and that the lien created by said mortgage dated August 2, 1922 and the lien created by this mortgage shall together constitute a first and best lien against the property herein described. It is further agreed and understood by the parties hereto that failure on the part of the mortgagors to comply with the conditions in this mortgage or the aforesaid mortgage dated August 2, 1922 shall operate to mature the notes secured by each mortgage and at the option of the mortgagee said notes may be declared immediately due and payable and the mortgagee shall have all the rights privileges afforded by each and both mortgages as if each and both said notes had fully matured.

The Parties Of The First Part further agree that any and all royalties or moneys coming to them or any of them, directly or indirectly, from any and all coal, oil, gas or other mineral rights leased, granted, sold, reserved, or contracted, shall belong to and be paid to the party of the second part at its option and shall be applied to the reduction of the principal of the loan hereby secured.

The Parties Of The First Part further agree that any and all moneys due and payable to them, or any of them, in settlement of any and all damages accruing by reason of any and all leases now on or which may be placed on the above real estate during the term of this mortgage, shall belong to and be paid to the party of the second part at its option and shall be applied to the reduction of the principal of the loan hereby secured.

This Mortgage is given to secure said loan made by the party of the second part to the parties of the first part as is evidenced by a first mortgage note duly executed and delivered by W. W. Radford and Nannie A. Radford, his wife, to the party of the second part, and payable to its order; said note being in said principal sum of One Thousand Dollars, and bearing interest on same at the rate of six per centum per annum, payments to be made on the amortization plan in accordance with the terms and conditions of said first mortgage note, which is made a part of this mortgage as fully as if wholly written herein.

The Parties Of The First Part hereby expressly warrant the title to said real estate and further expressly covenant that they have a good right to sell, convey and

mortgage the same; that same is free from all encumbrances, prior to, or on an equality with this mortgage, that they have a good and perfect title to the same against all persons whomsoever and that this mortgage is and shall be the first and best lien against said premises.

The Parties Of The First Part further convenant and agree with the party of the second part:

First, That they will pay, when due, all taxes, liens, judgments or assessments which may be lawfully assessed against the property hereby mortgaged and all charges of every character against the same and any such taxes, liens, judgments, assessments or charges, not paid when due, may be paid by the mortgagee and when so paid shall become immediately due to the party of the second part, shall become a part of the mortgage debt and shall bear simple interest at the rate of six per centum per annum until paid. The parties of the first part further agree, immediately upon the payment of same, to furnish to the party of the second part receipts of the proper officers or parties, for all such payments, and it is agreed that all irregularities and defects in the levy or assessment and the right to insist that the personal property be first exhausted in the payment of such taxes and assessments are hereby expressly waived, and the receipt of the proper officers shall be conclusive evidence as to the amount and validity of such payments. The parties of the first part will, during the term of this mortgage, duly assess said real estate for taxation at the time prescribed by law.

Second, That the whole and every portion of said loan shall be expended only for the purposes specified in the original application, which application is hereby made a part of this mortgage the same as if fully copied herein, except that the party of the second part may permit said loan to be used for any other purpose authorized by the Federal Farm Loan Act, said permission to be given in writing only.

Third, That said loan is to be repaid on an amortization plan by means of a fixed number of annual, or semi-annual, installments sufficient to cover the charges and amounts to be applied on the principal, as provided in, and required by, The Federal Farm Loan Act as is fully provided for in said first mortgage note.

Fourth, To take good care of said real estate and not to commit waste, or allow the same to be committed on said premises, but will cause the same to be worked and cultivated in a proper and former-like manner at all

times and will not cut or remove any timber or improvements from said land, except such as may be needed for ordinary farming purposes, and shall keep said lands in as good condition for farming purposes as they are now in and will keep the houses, fences and other improvements on said land in good condition and repair at all times.

Fifth, To pay all expenses incurred by the party of the second part in securing abstracts of title and for attorneys' fees in protecting the security of this mortgage, or in foreclosing the same, together with all necessary expenses pertaining thereto, all of which amounts shall become due when paid, shall become part of this mortgage, and shall bear interest at six per centum per annum from the time same shall be paid by the party of the second part until the party of the second part shall be fully repaid the same. In case of foreclosure all of said expenses may be made a part of the judgment.

Sixth, That upon the institution of proceedings to foreclose this mortgage the plaintiff shall be entitled to have a receiver appointed by the Court to take possession and control of the premises, to collect the rents and profits, and to put said premises in good repair suitable for farming.

Seventh, To keep the buildings upon said premises insured against loss or damage by fire in some good, reliable insurance company or companies, to be approved by the party of the second part, its successors or assigns, to the amount of not less than One Thousand Dollars, with loss, if any, payable to said party of the second part, its successors or assigns, as its, or their, interest may appear at time of loss, and forthwith upon issue shall deposit said policy with said party of the second part, its successors or assigns. In the event the parties of the first part shall fail to furnish or pay for said insurance, then the party of the second part shall have the right to procure and pay for said insurance; and unless the parties of the first part shall immediately reimburse the party of the second part therefor, then the party of the second part shall have the right at any time to declare the note secured by this mortgage due and payable.

In The Event there is any default of any amortization payment called for herein, or any part thereof, or any delinquent taxes against the land covered by this mortgage, or the parties of the first part fail to insure and keep the premium paid on the buildings situated on the land described herein, then it is agreed by the parties

of the first part that any second lienholder, or any party or parties directly or indirectly interested in this loan, may then pay such amortization payment, taxes or insurance premium, and are hereby given a lien on the property described herein, subject to the lien of The Louisville Joint Stock Land Bank, to secure the amount of any such payment or payments, with interest thereon from the date of the payment so made and the cost of enforcing its lien. It is further agreed by the parties of the first part that in the event any one or more of the parties mentioned in this paragraph pay any amortization payment, delinquent taxes or past due insurance premium, as set out herein, then such party or parties are to have the option to immediately enforce the lien to the amount of such payment and sell the property described herein, subject to the lien of The Louisville Joint Stock Land Bank, in satisfaction of such payment or payments, interests and costs. It is further agreed by parties of the first part that in the event default is made in any amortization payment, taxes due on the property described herein, or insurance premium due on the buildings situated upon the land described herein, and there is a foreclosure of same by the party making such payments, then The Louisville Joint Stock Land Bank has an option to declare due and payable its note secured by this mortgage and may enforce its lien and sell said property at the same time it is sold by any such party making such payment or payments.

This Mortgage and the note secured thereby are executed and delivered under and in accordance with the said Federal Farm Loan Act, and are subject to all the terms, conditions and provisions thereof, which Act is made a part hereof the same as if set out in full herein.

The Condition Of This Mortgage is, that if the parties of the first part shall well and truly make all the payments called for in said first mortgage note in accordance with its terms and tenor and shall perform each and every one of the convenants, conditions and agreements, either in said note or this mortgage contained, then the same shall be null and void, but if the parties of the first part shall, in any wise, be in default in respect to any of such payments, or in respect to the performance of any of the conditions, covenants or agreements in said note or this mortgage contained, then the whole indebtedness provided for herein or in said note, together with all interest on same, all of which is hereby secured by this mortgage, shall, at the option of the said The Louisville Joint Stock Land Bank, its successors or assigns, become

due and payable forthwith without demand or notice, notice of exercise of such option being hereby expressly waived, and same may be immediately collected by suit to enforce the same.

When This Mortgage shall have been fully paid off in accordance with its terms and tenor, then same shall be duly released by the party of the second part, but all legal fees pertaining to such release shall be paid by the parties of the first part.

In Testimony whereof, witness the hand of the parties of the first part this the day and date first above written.

(Signed) W. W. Radford,
" Nannie A. Radford.

State of Kentucky,
Christian County.

I, L. E. Dixon, a Notary Public, in and for the County and State aforesaid do certify that on this day the foregoing mortgage from W. W. Radford and Nannie A. Radford, his wife, to The Louisville Joint Stock Land Bank was produced to me and was acknowledged and delivered by W. W. Radford and Nannie A. Radford, his wife, parties thereto to be their act and deed.

Witness my hand this the 30th day of January, 1924.

Daisy Aldridge,
Notary Public, Christian County, Ky.
(Official Designation)

My commission expires.....
(Seal).

Said mortgage was duly recorded on February 5, 1924, in Mortgage Book 114, page 257, in the Christian County Court Clerk's office, and constitutes a lien on the mortgaged real estate described therein, and the rents and profits therefrom, prior and superior to all other interests in, claims and lien on said mortgaged property.

The Bank is the owner and holder of said note and mortgage dated January 30, 1924, and at all times herein mentioned was the owner and holder thereof.

Radford and Mrs. Radford paid the installments due on said note of January 30, 1924, to and including the installment due on September 1, 1932, but failed and refused to pay the installments due on March 1, 1933, September 1, 1933, and March 1, 1934, or any part thereof, or any interest thereon. The said installments which

were paid were respectively paid on the dates set opposite the installment on the reverse side of said note. The aforesaid mortgages respectively dated August 2, 1922, and January 30, 1924, covered and mortgaged the same property.

Radford and Mrs. Radford, on July 12, 1933, failed and refused to insure the buildings upon the mortgaged land again loss or damage by fire in the sum of $1,000, or any sum. Thereupon the Bank, on July 12, 1933, insured said buildings in the sum of $1,000 against loss or damage by fire, and paid a premium therefor in the sum of $82.00.

Radford and Mrs. Radford have failed and refused to pay the taxes levied and assessed against the mortgaged property and falling due for the years 1931, 1932, and 1933 or any part thereof, and said taxes are now delinquent and unpaid.

On June 5, 1933, pursuant to the terms of the aforesaid notes and mortgages, the Bank declared the entire indebtedness evidenced by said notes and mortgages immediately due and payable.

On June 5, 1933, there was due and owing by Radford and Mrs. Radford to the Bank (1) the sum of $7,063.43 on account of said note and mortgage dated August 2, 1922, together with interest thereon at the rate of 6% per annum from March 1, 1932, until paid, less a credit of $9.55 previously paid on said interest, and (2) the sum of $891.21 on account of said note and mortgage dated January 30, 1924, together with interest thereon at the rate of 6% per annum from September 1, 1932, until paid. No part of either of said sums or any interest thereon has been paid.

On June 23, 1933, the Bank duly instituted suit on the aforesaid notes and mortgages against Radford and Mrs. Radford in the Christian Circuit Court, which then was and now is a duly constituted court of the State of Kentucky of competent jurisdiction, and filed in the office of the Clerk of that court a petition in equity which was and is in words and figures as follows, to-wit: (except that Exhibits A, B, D and E filed therewith, which are the notes and mortgages hereinbefore set forth, are not recopied herein and Exhibit C filed therewith is not copied herein).

STATE OF KENTUCKY.
CHRISTIAN CIRCUIT COURT.

No. 15481.
Louisville Joint Stock Land Bank, - - Plaintiff,

v.

W. W. Radford,
Nannie A. Radford, his wife,
A. B. Broadbent, Trustee, and
Allen Radford, - - - - - Defendants.

PETITION IN EQUITY.

PARAGRAPH I.

Plaintiff, Louisville Joint Stock Land Bank, states it is and at all times herein mentioned was a corporation organized and existing under an Act of Congress, known as the Federal Farm Loan Act, with power to sue and be sued, contract and be contracted with and to lend money on first mortgages.

It states that the defendants, W. W. Radford and Nannie A. Radford, his wife, by their promissory note dated August 2, 1922, executed and delivered to this plaintiff, promised and agreed to pay it the sum of $8,000.00 on the amortization plan as set out in said note with six per cent per annum interest thereon from date until paid. No part of said note has been paid except the interest thereon to March 1, 1932, and $936.57 on the principal, leaving an unpaid balance of $7,063.43 with 6% interest thereon from March 1, 1932, until paid, less a credit of $9.55 paid on said interest. Copy of said note is filed herewith and made a part hereof marked "Exhibit A" and the original will be filed at the time or before this action is submitted for trial.

It states that simultaneously with the execution of said note and in order to secure the payment of same, the defendants, W. W. Radford and Nannie A. Radford, his wife, executed to it their first mortgage on three certain tracts or parcels of land, together with the rents, issues and profits arising therefrom, located in Christian Coun-

ty, State of Kentucky, about 12 miles south of Hopkinsville on the Palmyra Road, described as follows, to-wit:

"First Tract—On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 each 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893, from Hunter Wood, Master Commissioner, of record in Deed Book 85, page 193, in the office of the Christian County Court Clerk; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustees of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, in the aforesaid office. Said tract of land with the exceptions deducted contains 93 3/8 acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the aforesaid office.

Second Tract—Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a

post oak stump, Giles' corner; thence with Giles line north 1 east 41 poles to a post oak in Giles line; thence south 89 east 208 poles to the beginning, and containing 53 acres more or less, and being the same real estate conveyed to said W. W. Radford on August 8, 1895, by W. W. Link by deed of record in Deed Book 94, page 60, aforesaid office, this tract adjoining the home place of the said W. W. Radford.

Third Tract—On the edge of Flat Lick near Jessie Giles' old place; beginning at a stone near Flemings fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning, and containing 25 acres, more or less; and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, in the aforesaid clerk's office."

Said mortgage was signed and acknowledged by the defendants, W. W. Radford and Nannie A. Radford, his wife, and recorded in the Christian County Court Clerk's office on August 9, 1922, in Mortgage Book 110, page 345. Copy of said mortgage is filed herewith and made a part hereof marked "Exhibit B" and the original will be filed at the time or before this action is submitted for trial. It states it has by virtue of said mortgage a first and superior lien on the above described real estate, with its rents, issues, and profits, to secure the balance of its note, namely, $7,063.43 with 6% interest thereon from March 1, 1932, until paid, less a credit of $9.55 paid on said interest, and its costs herein expended and it asks the court to so adjudge.

Plaintiff states that by the terms and conditions of said note so executed to it as hereinbefore set out and secured by said mortgage, it was expressly provided that if there be any default in any amortization payment, the whole indebtedness represented by said note remaining unpaid and secured by said mortgage, together with all interest thereon, should, at the option and election of this plaintiff, become due at once without demand or notice, notice of the exercise of such option being expressly waived in said note and mortgage. It states that the amortization payment of $280.00 due Septem-

ber 1, 1932, has not been paid the payment of like amount due March 1, 1933, has not been paid and by reason of said payments not being made, all of the indebtedness set out herein, at the option and election of this plaintiff, became due and payable and this plaintiff has elected to and declared all of said indebtedness represented by said note and secured by said mortgage due and payable and does hereby declare all of said indebtedness due and payable.

It further states that under the provisions of the mortgage executed to it by the defendants, W. W. Radford and Nannie A. Radford, his wife, it was agreed that in event foreclosure proceedings were filed that it would have the right to have a receiver appointed to take charge of said property; that the property mortgaged to it, together with the rents, issues and profits arising therefrom, is insufficient to discharge the indebtedness set out herein; that said property is depreciating in value; that the conditions of the mortgage are not being carried out; that the buildings and fencing are in need of repair; that by reason of these facts and the fact that unless a receiver is appointed the holders of the lien indebtedness against the above described property will suffer irreparable injury, it, together with the other lienholder, is entitled to have a receiver appointed to take charge of said property for the purpose of collecting the landlord's share of the, rents, issues and profits and to apply same to the discharge of its indebtedness set out herein.

It states that the defendant, A. B. Broadbent, Trustee, is claiming some interest in the above described property by reason of a mortgage dated March 23, 1925, recorded in Mortgage Book 117, page 21, County Court Clerk's office of Christian County, Kentucky, and he is made a party defendant and called upon to answer and set up any claim or interest he may have by reason of said mortgage. It states, however, that any claim or interest he may have as trustee in said mortgage is subsequent and inferior to that of this plaintiff and asks the court to so adjudge. It further states that said defendant, A. B. Broadbent, Trustee, is a non-resident of the State of Kentucky and as plaintiff believes is now absent therefrom; that he resides in Montgomery County in the State of Tennessee and that Clarksville in said county and state is the name of the place wherein a post office is kept nearest to the place where said defendant resides. Affidavit as to the non-residency of said de-

fendant, A. B. Broadbent, Trustee, is filed herewith and made a part hereof marked "Exhibit C."

It states that the defendant, Allen Radford, is a tenant on the above described real estate and he is called upon to set up any claim or interest he may have by reason of his tenancy in order that the court may determine the rights of the parties hereto and make the proper orders.

PARAGRAPH II.

Plaintiff, for its second cause of action, reaffirms all of the allegations of its first cause of action as if fully set out herein and says for its second cause of action that the said defendants, W. W. Radford and Nannie A. Radford, his wife, by a promissory note dated January 30, 1924, executed and delivered to it, agreed to pay it the sum of $1,000.00 on the amortization plan as set out in said note with six percent interest thereon from date until paid. No part of said note has been paid except the interest thereon to September 1, 1932 and $108.79 on the principal and there is a balance due this plaintiff on said note of $891.21 with 6% interest thereon from September 1, 1932, until paid. Copy of said note is filed herewith and made a part hereof marked "Exhibit D" and the original will be filed at the time or before this action is submitted for trial.

It states that simultaneously with the execution of said note the defendants, W. W. Radford and Nannie A. Radford, his wife, in order to secure the same mortgaged to it the tracts of land above described, together with the rents, issues and profits arising therefrom. Said mortgage was duly signed and acknowledged by said defendants, W. W. Radford and Nannie A. Radford, his wife, and recorded in the Christian County Court Clerk's office in Mortgage Book 114, page 257. Copy of said mortgage is filed herewith and made a part hereof marked "Exhibit E" and the original will be filed at the time or before this action is submitted for trial. It states that it has by virtue of said mortgage a lien on the above described real estate, together with the rents, issues and profits arising therefrom to secure its indebtedness of $891.21 with 6% interest thereon from September 1, 1932, until paid and its said lien for the indebtedness of $7,063.43 with 6% interest thereon from September 1, 1932 until paid, being the balance of the first note executed to it, and its lien for $891.21 with 6% interest thereon from September 1, 1932 until paid, being the unpaid balance of the last note executed to it

by said defendants, W. W. Radford and Nannie A. Radford, his wife, are first and superior liens on said real estate.

Plaintiff states that by the terms and conditions of the note so executed to it by the defendants, W. W. Radford and Nannie A. Radford, his wife, it was expressly provided therein if there be any default in any amortization payment provided for in said note, the whole indebtedness represented by said note remaining unpaid and secured by said mortgage, together with all interest thereon, should, at the option and election of this plaintiff, become due and payable at once without demand or notice, notice of the exercise of such option being expressly waived in said mortgage. It states that the amortization payment of $35.00 due March 1, 1933 on said note has not been paid and by reason of said payment not being made, all of the indebtedness represented by said note, at the option and election of this plaintiff, became due and payable and this plaintiff has elected to and declared all of said indebtedness due and payable and does hereby further declare all of said indebtedness represented by said note due and payable.

Plaintiff states that under the provisions of the mortgage executed to it, last above referred to, it was agreed and understood by the plaintiff and the defendants, W. W. Radford and Nannie A. Radford, his wife, that said mortgage should stand on an equality with the first mortgage of $8,000.00 above referred to and the lien created by said last mortgage should with the lien created by the first mortgage constitute a first and prior lien against the property above described. Plaintiff states that under said provisions above, said mortgages are of equal dignity and constitute a lien on said property of equal dignity for the aggregate amount of both thereof.

It states that said property is one farming unit and cannot be divided without materially impairing its value, it being not susceptible to division, and asks that said real estate be sold as a whole in satisfaction of all the lien debts shown to exist thereon. It states that there are now no liens known to exist against same except as set out herein.

Wherefore, plaintiff, Louisville Joint Stock Land Bank, prays that process issue to Christian County, Kentucky for the defendants, W. W. Radford, Nannie A. Radford, his wife, and Allen Radford; that a warning order be entered by the clerk of this court warning the defendant, A. B. Broadbent, Trustee, concerning the

nature and pendency of this action; that its debt set out herein be adjudged due and that it be given judgment against the defendant, W. W. Radford, for the sum of seven thousand, sixty-three and forty-three hundredths ($7,063.43) dollars with six percent interest thereon from March 1, 1932 until paid, less a credit of $9.55 paid on said interest; that it be given judgment against said defendant, W. W. Radford, for the further sum of eight hundred, ninety-one and twenty-one hundredths ($891.21) dollars with six percent interest thereon from September 1, 1932 until paid and its costs herein expended; that a receiver be appointed by this court to take charge of said property for the purpose of collecting the rents, issues and profits arising therefrom and apply same to plaintiff's indebtedness; that it be adjudged a first and superior lien on the real estate above described to secure its indebtedness herein set out, including interest and the costs of this action; that said two mortgages be adjudged of equal dignity and constitute a first lien on the property above described; that said property be sold as a whole in satisfaction of all the lien debts shown to exist thereon; that this plaintiff be adjudged a first and superior lien on the funds arising from the sale of said property as well as the rents issues and profits, to secure it in all of its indebtedness and costs herein, and finally it prays for all other proper and equitable relief to which it may be entitled.

H. W. Linton,
A. L. McDowell,
Attys. for Plaintiff,
Louisville Joint Stock Land Bank.

Thereupon summons was issued and served on Radford and Mrs. Radford. Said suit is hereinafter referred to as the Christian County suit.

Prior to instituting the Christian County suit, the Bank advised Radford and Mrs. Radford of the provisions of the Act known as "The Emergency Farm Mortgage Act of 1933," whereby their then existing indebtedness could be refinanced through the Federal Land Bank of Louisville and the Land Bank Commissioner with no payment of principal for five years and at an interest rate of 4½% for the first five years, and 5% thereafter; advised them of the procedure required under that Act; and urged them to avail themselves of its benefits. Radford and Mrs. Radford declined, failed and refused

to take any steps or make any effort to avail themselves of the benefits of that Act.

On September 27, 1933, pursuant to notice previously served on Radford and Mrs. Radford, the Bank, in open Court, moved the Christian Circuit Court to appoint a receiver to take charge of the mortgaged property.

At said time J. Charles Fleming, the duly appointed, constituted and acting Conciliation Commissioner for Christian County under §75 of the Bankruptcy Act as amended by Act of March 3, 1933, interposed an objection to the appointment of such a receiver on the ground that he was informed that Radford and Mrs. Radford desired to avail themselves of the benefits of §75 of the Bankruptcy Act. The Christian Circuit Court, over the objection and exception of the Bank, declined to appoint a receiver and ordered that the Christian County suit be held in abeyance for such time as might be necessary to allow Radford and Mrs. Radford to proceed under §75 of the Bankruptcy Act.

The Bank again advised and urged Radford and Mrs. Radford to avail themselves of the benefits of the "Emergency Farm Mortgage Act of 1933." Radford and Mrs. Radford again declined, failed and refused to take any steps or make any effort to avail themselves of the benefits of the "Emergency Farm Mortgage Act of 1933," or to attempt to refinance their indebtednesses to the Bank.

Thereafter, on October 20, 1933, the Bank, by counsel, in open court moved the Christian Circuit Court to enter a judgment in its favor againts Radford and Mrs. Radford in the Christian County suit because (1) Radford and Mrs. Radford had filed no pleading or defense to said petition, and (2) had taken no steps to avail themselves of the "Emergency Farm Mortgage Act of 1933."

Radford again appeared and stated that he desired to avail himself of §75 of the Bankruptcy Act, and, over the objection and exception of the Bank, the Christian Circuit Court refused to enter any judgment.

Thereafter, on October 23, 1933, J. Charles Fleming, Conciliation Commissioner, filed in the Christian County suit an intervening petition which was and is in words and figures as follows, to-wit:

> "Comes W. W. Radford, who states that he is defendant in the above styled action; that desiring to obtain the relief offered under §75 of the Amended Bankruptcy Act, he has filed his petition

and schedule as required under the said Act, and that he respectfully asks that no further proceedings be had in the above styled action until final disposition of his case in the Federal Court."

In fact, Radford did not file his petition or schedule in the United States District Court until February 26, 1934.

Thereafter, the Bank continued to and at numerous times did advise and urged Radford and Mrs. Radford to avail themselves of the benefits of the "Emergency Farm Mortgage Act of 1933," but Radford and Mrs. Radford have continuously declined, failed and refused, to and including the present time, to make any effort or to take any step to avail themselves of the benefits of that Act.

On February 26, 1934, Radford filed in the United States District Court for the Western District of Kentucky a petition under §75 of the Bankruptcy Act as amended.

In April, 1934, the Bank offered to accept from Radford and Mrs. Radford a deed to the mortgaged property in full satisfaction of all indebtedness due it from them on account of the aforesaid notes and mortgages and payment by it of the aforesaid insurance premium, and to assume the unpaid taxes against the mortgaged property. Radford and Mrs. Radford agreed to give the Bank a deed under those conditions. Thereafter, the Bank prepared such a deed, and on April 5, 1934, presented said deed to Radford and Mrs. Radford for signature. Radford and Mrs. Radford then repudiated their agreement and refused, and have continued to refuse, to sign such a deed.

On June 30, 1934, the Christian Circuit Court duly entered a judgment and order of sale in the Christian County suit which said judgment and order of sale was and is in words and figures as follows, to-wit:

"No. 15481

STATE OF KENTUCKY
CHRISTIAN CIRCUIT COURT

Louisville Joint Stock Land Bank, - - Plaintiff,

v. JUDGMENT AND ORDER OF SALE.

W. W. Radford, et al., - - - - - Defendants.

The above styled cause coming on for hearing and it appearing to the court that the defendants, W. W. Radford, Nannie A. Radford, his wife, and Allen Radford, having been duly summoned and having failed to answer herein and on motion of the plaintiff, Louisville Joint Stock Land Bank, this action is dismissed as to the defendant, A. B. Broadbent, Trustee, and the said cause coming on for further hearing and being submitted to the court for trial and judgment upon the pleadings and exhibits on file herein and the plaintiff, Louisville Joint Stock Land Bank, having this day filed with the clerk of this court its original notes and mortgages sued on herein and it appearing that all of said defendants are properly before the court and subject to its jurisdiction and it further appearing that the unpaid balance of plaintiff's mortgage of $7063.43 with six per cent interest thereon from March 1, 1932 until paid, less a credit of $9.55 paid on said interest, December 24, 1932, and the sum of $891.21 with six per cent interest thereon from September 1, 1932 until paid, constitutes a first and prior lien on the property hereinafter described, said amounts being adjudged by the court of equal dignity, and it is further adjudged by the court that the plaintiff recover of the defendant, W. W. Radford, the sum of seven thousand sixty-three and forty-three hundredths dollars ($7063.43) with six per cent interest thereon from March 1, 1932 until paid, less a credit of $9.55 paid on said interest, and the further sum of eight hundred ninety-one and twenty-one hundredths dollars ($891.21) with six per cent interest thereon from September 1, 1932 until paid, being the balance of its two notes sued on herein; that it also recover from said defendant its costs herein expended.

It is further adjudged by the court that the terms and conditions of the mortgage contracts of the plaintiff, Louisville Joint Stock Land Bank, with the defend-

ants, W. W. Radford, and Nannie A. Radford, his wife, have been violated and broken and that it is entitled to a foreclosure of its said mortgage contract.

It is further adjudged by the court that in order to secure its indebtedness as set out herein and the costs of this action the plaintiff, Louisville Joint Stock Land Bank, has a first and superior lien on three certain tracts or parcels of land, together with the rents, issues and profits arising therefrom, located in Christian County, Kentucky, more particularly described as follows:

In Christian County, Kentucky, about 12 miles south of Hopkinsville, on the Palmyra road, to-wit:

Tract #1.—A certain tract or parcel of land on the east side of the Palmyra Road near Howell, Christian County, Kentucky, Beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line, thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner, thence west 20 poles to a stake and pointers Quarles corner, thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners, thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said 3 acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife, by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893, from Hunter Wood, Master Commissioner, of record in Deed Book 85, page 193, in the office of the Christian County Court Clerk; there is also excepted two acres of real estate at the northwest corner of said tract, which was conveyed by W. W. Radford and wife to the Trustees of the Olivet Baptist Church on the 2nd of October 1905, by deed of record in Deed Book 110, page 226, in the office of the

Christian County Court Clerk. Said tract of land with the exceptions deducted contains 93⅜ acres, more or less, being the same land conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the office of the Christian County Court Clerk.

Tract #2.—Beginning at a stake in the Palmyra Road, thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump Giles' corner; thence with Giles line north 1 east 41 poles to a post oak in Giles line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less, being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link, by deed recorded in the aforesaid clerk's office in Deed Book 94, page 60, this tract adjoining the home place of said W. W. Radford.

Tract #3.—Lying and being on the edge of Flat Lick near Jessie Giles' old place; beginning at a stone near Fleming's fence in his line runs thence south 63½ west 139 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles; with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning, containing 25 acres, more or less; being the same land conveyed to W. W. Radford by E. C. Radford by deed dated December 28, 1904, recorded in Deed Book 108, page 434, in the clerk's office aforesaid.

It is further ordered and adjudged by the court that said property above described is considered one farming unit and cannot be divided without materially impairing its value and that said property be sold as a whole for the purpose of paying the lien indebtedness against same.

The Master Commissioner of the Christian Circuit Court will make said sale at the court house door in Hopkinsville, Christian County, Kentucky, on the first day of some regular term of the county or circuit court held in and for said county, at public outcry to the highest and best bidder, on a credit of six and twelve months. And he will take bonds for the purchase price of equal

amounts from the purchaser, with good personal security, payable to himself as such Commissioner, which bonds shall bear interest from the date of sale until paid at the rate of six percent per annum, and have the force and effect of a replevin bond, upon which execution may issue if not paid at maturity, with a lien retained on said real estate to better secure the payment thereof. In the event plaintiff becomes purchaser of said property above described at the sale thereof for an amount not exceeding its debt, interest and costs, bonds need not be executed.

Before making said sale said Commissioner will first advertise the time, terms and place thereof, and the sum for which it is to be made, together with a description of said property to be sold, by written or printed notices posted up, one at the court house door aforesaid and three others in the vicinity of the land to be sold, for at least ten days just prior to the day of the sale. He will also advertise said sale in a newspaper as provided by law for at least once a day for three consecutive days preceding the sale and will cause the land to be appraised as provided by law. Said commissioner will report his acts herein to the present or next term of court and will be allowed the regular statutory fees for making said sale.

Execution may issue for any part of the judgment of the plaintiff, Louisville Joint Stock Land Bank, against the defendant, W. W. Radford, that may remain unpaid after the sale of the property above described.

This action is left open for such future orders as the court may from time to time see proper to make.

Ira D. Smith,
Judge Christian Circuit Court."

Thereupon the Bank instructed its Christian County counsel to advertise said property for sale and proceed to sell said property as expeditiously as possible.

Section 75 of the Act of July, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States" as amended prior to 1933 (hereinbefore and hereinafter called the Bankruptcy Act) and as amended by Acts respectively approved March 3, 1933, June 7, 1934, June 28, 1934, and said Amendatory Acts approved respectively March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, constitute an unconstitutional invasion of the rights reserved to the

States and of the rights reserved to the people by the Tenth Amendment to the Federal Constitution.

Said Section 75 and said Amendatory Acts respectively approved March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, are in no true sense Bankruptcy Laws, or parts of Bankruptcy Laws, but are laws for the relief of debtors. The Congress of the United States had no power or authority to enact said Section 75, or either of said Amendatory Acts approved March 3, 1933, June 7, 1934, and June 28, 1934, under the delegation of power to it in Article 1, §8, of the Federal Constitution, which authorizes it to establish uniform laws on the subject of bankruptcies throughout the United States, or under any other provision of the Federal Constitution, and said Amendatory Acts approved March 3, 1933, June 7, 1934, and June 28, 1934, and said Section 75, and each of them, are in violation of the Federal Constitution.

Said Section 75 and said Amendatory Acts respectively approved March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, are destructive of the Bank's business, and constitute a taking of its property without due process of law in violation of the Fifth Amendment to the Federal Constitution.

The judgment entered in the Christian County suit by the Christian Circuit Court is entitled to full faith and credit from this Court, and to allow this proceeding to be maintained or to hinder, delay or prevent the Bank from immediately proceeding to advertise and sell the mortgaged property under said judgment of the Christian Circuit Court is a denial of full faith and credit to that judgment and is in violation of Article 4, §1, of the Federal Constitution. Said Section 75 and said Amendatory Acts respectively approved March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, as they are attempted to be applied in this proceeding and insofar as they purport to affect the right of the Bank to immediately advertise and sell the mortgaged property under said judgment of the Christian Circuit Court, are in violation of Article 4, §1, of the Federal Constitution.

The Bank has declined and declines and refuses to accept the composition and extension proposal offered by Radford, declines and refuses to consent to the sale

to Radford by the Trustee of any part of the bankrupt estate at the appraised or any value thereof upon the terms and conditions set forth in Paragraph 3 of Subsection S of Section 75 of the Bankruptcy Act; declines and refuses to agree to and objects and this answer shall be treated as a written objection by the Bank to the manner of payments and distribution of the debtor's property as provided for in said Subsection S of Section 75 of the Bankruptcy Act. The Bank further objects to Radford's being allowed to retain possession of all, or any part, of his property or to be given any right to purchase it under the provisions of Paragraph 7 of Subsection S of Section 75 of the Bankruptcy Act. The Bank refuses to agree to any composition or extension proposal, save a proposal whereby the Bank will either (1) be paid the full amount of its debt, together with interest thereon, or (2) whereby the Bank will be given a general warranty deed conveying to it in fee simple the mortgaged property in full satisfaction of the debt of Radford and Mrs. Radford.

Wherefore, Louisville Joint Stock Land Bank prays that (1) Section 75 of the Bankruptcy Act as amended and the Acts Amendatory to the Bankruptcy Act which were approved March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, be adjudged to be unconstitutional, null and void; (2) the second amended and substituted petition herein and this proceeding be dismissed; (3) it be allowed to pursue its remedies in the Christian Circuit Court and to immediately advertise and sell the mortgaged property in accordance with the judgment heretofore entered by the Christian Circuit Court in the Christian County suit; and (4) it recover its costs herein expended, and (5) it be given all other proper relief.

John E. Tarrant,
Counsel for Louisville Joint Stock
Land Bank.

J. C. Engelhard states that he is Chairman of the Board of Directors and Vice President and the chief officer now in Jefferson County, Kentucky, of the Louisville Joint Stock Land Bank; that he has read the foregoing Answer of Louisville Joint Stock Land Bank to the Second Amended and Substituted Petition and that the denials and allegations therein contained are true as he verily believes.

J. C. Engelhard.

Subscribed and sworn to before me by J. C. Engelhard this November 10, 1934.

My Commission expires January 6, 1935.

Margaret Hennessey,
Notary Public, Jefferson Co., Ky.

(Seal)

REPLICATION—Filed Nov. 10, 1934.

The Debtor herein, for his replication to the Answer of Louisville Joint Stock Land Bank to Second Amended and Substituted Petition, does admit each and all of the allegations therein contained.

Frank Rives,
David A. Sachs, Jr.,
Edwin A. Krauthoff,
Counsel for Debtor.

ORDER—Entered November 14, 1934.

This cause having been submitted on the pleadings herein, and particularly on the objections contained in the answer of the Louisville Joint Stock Land Bank to the proceedings, upon the ground that the so-called Frazier-Lemke Act, the benefits of which are sought by the petitioner herein, is unconstitutional for the reasons set out in said answer; and the court having heard argument of counsel and being fully advised, is of the opinion that the said Act is constitutional and within the competency of Congress, for the reasons set out in the written opinion this day delivered, which is ordered to be filed and made a part of the record herein.

It Is Therefore Ordered that the objections of the Louisville Joint Stock Land Bank to this proceeding be and the same is overruled, to which ruling the said bank excepts; and the bank in open court having declined to plead further,—

It Is Ordered And Adjudged that William W. Radford, Sr. be and he is hereby adjudged a bankrupt within the true intent and meaning of the National Bankruptcy Act, as amended by the Act of June 28, 1934.

It Is Further Ordered that this proceeding be and it is now referred to Nat C. Cureton, a Referee in Bankruptcy of this court, to take such further proceedings herein as are authorized by said National Bankruptcy Act, as amended by the Act of June 28, 1934, and the said William W. Radford, Sr. shall henceforth attend before the said Referee at such times and places as may be ordered by said Referee, and be subject in all respects to the jurisdiction of said Referee.

To all of which the Louisville Joint Stock Land Bank excepts.

Chas. I. Dawson,
Judge.

OPINION—Filed Nov. 14, 1934.

After an unsuccessful effort to secure a composition or extension of his debts under Section 75 of the Bankruptcy Act, as added by the Act of March 3, 1933 (Section 203, Title 11, U. S. C. A.), the debtor filed an amended petition, as authorized by the Frazier-Lemke Act (Act of June 28, 1934), claiming the benefits of that Act. For convenience, the Act is set out in full in the margin.* At the time this amendment was filed the debtor

*(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal, or if he feels aggrieved by the composition or extension, may amend his petition or answer asking to be adjudged a bankrupt. Such farmer may, at the time of the first hearing, petition the court that all of his property, whether pledged, encumbered, or unencumbered, by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of any part or parcel or all of the remainder of his property and pay for same under the terms and conditions set forth in this subsection (s).

(1) Upon such a request being made in the petition or answer, at the time of the first hearing, appraisers shall be designated and appointed. Such appraisers shall appraise all the property of the debtor at its then fair and reasonable value, not necessarily the market value at the time of such appraisal. The appraisals shall be made in all other respects, with right of objections, exceptions, and appeal, in accordance with this Act: *Provided*, That in case of real estate either party may file objections, exceptions, and appeals within one year from date of order approving the appraisal.

(2) After the value of the debtor's property shall have been fixed by the appraisal as herein provided, the referee shall issue an order setting aside to such debtor his exemptions as prescribed by the State law, subject to any existing mortgages or liens upon any such exemptions to an amount equal to the value, as fixed by the appraisal, of the value of such exempt property as is covered by any mortgage or lien, and shall further order that the possession, under the control of the court, of any part or parcel or all of the remainder of the debtor's property, shall remain in the debtor subject to a general lien, as security for the payment of the value thereof to the trustee of the creditors, if a trustee is appointed, such a lien to be subject to and inferior to all prior liens, pledges, or encumbrances. Such prior liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such prior liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors holding such prior liens, pledges, or encumbrances up to the actual value of such property as fixed by the appraisal provided for herein. All liens herein on livestock shall cover all increase, and all liens on real property shall cover all rental received or crops grown thereon by the debtor, as security for the payment of any sum that may be due or past due under the terms and provisions of the next paragraph, until the full value of any such particular property has been paid.

(3) Upon request of the debtor, and with the consent of the lien holder or lien holders, the trustee, after the order is made setting aside to the debtor his exemptions, shall agree to sell to the debtor any part, parcel, or all of the remainder of the bankrupt estate at [illegible] appraised value upon the following terms and conditions, and upon such other conditions as in the judgment of the trustee shall be fair and equitable:

a. Payment of 1 per centum interest upon the appraised price within one year from the date of said agreement.

was the owner of a 170 acre farm in Christian County, Kentucky, on which there were two mortgages, aggregating the principal sum of $9,000, in favor of the Louisville Joint Stock Land Bank. In 1933 foreclosure pro-

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b. Payment of 2½ per centum of the appraised price within two years from the date of said agreement.

c. Payment of an additional 2½ per centum of the appraised price within three years from the date of said agreement.

d. Payment of an additional 5 per centum of the appraised price within four years from the date of said agreement.

e. Payment of an additional 5 per centum of the appraised price within five years from the date of said agreement.

f. Payment of the remaining unpaid balance of the appraised price within six years from the date of said agreement.

Interest shall be paid on the appraised price and unpaid balance of the appraised price yearly as it accrues at the rate of 1 per centum per annum and all taxes shall be paid by the debtor.

The proceeds of such payments on the appraised price and interest shall be paid to the lien holders as their interests may appear, and to the trustee of the unsecured creditors, as their interests may appear, if a trustee is appointed.

(4) An agreement having been reached as provided in subsection (3), the debtor may consume or dispose of any part or parcel or all of said property whether covered by the general lien to the trustee, if a trustee is appointed, or subject to pledges or prior liens or encumbrances held by secured creditors, provided he pays the appraised value of such part or parcel or all, as the case may be, to the secured creditors, as their interests may appear, and the trustee of the unsecured creditors, as his interests may appear, if a trustee is appointed, or he may put up a bond approved by the referee in bankruptcy that he will make payments, as provided for herein, of any property so consumed or disposed of.

(5) In case the debtor fails to make any payments, as herein provided, to any or all of the secured creditors or to the trustee of the unsecured creditors, then such secured creditors or the trustee may proceed to enforce their pledge, lien, or encumbrances in accordance with law. It shall be the duty of the secured creditors and of the trustee of the unsecured creditors to discharge all liens of record in accordance with law, whenever the debtor has paid the appraised value of any part, parcel or all of his property as herein provided.

(6) Having complied with the provisions of subsection (3), the debtor may apply for his discharge as provided in this Act.

(7) If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as herein provided for, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided*, That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: *Provided, however*, That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.

If the debtor fails to comply with the provisions of this subsection the court may order the trustee to sell the property as provided in this Act.

ceedings were instituted by the bank in the State Court, the debtor having defaulted on several installments of principal and interest and also on his obligation to pay the taxes and to keep the mortgaged property insured, and on June 30, 1934, a decree of foreclosure was entered and the property ordered sold. The amended petition herein was filed after the entry of the decree of foreclosure, but before a sale thereunder.

The Louisville Joint Stock Land Bank intervened in this proceeding by answer, challenging the constitutionality of the Frazier-Lemke Act, and this is the sole issue for decision. The bank insists:

(1) That the Frazier-Lemke Act does not deal with the subject of bankruptcies, or with any subject over which Congress is given legislative power by the Constitution.

(2) That the Act deprives creditors of their property without due process of law, in violation of the fifth Amendment to the Constitution of the United States.

(3) That, as applied to this proceeding, the Act denies full faith and credit to a judgment of a Kentucky Court of competent jurisdiction, in violation of Section 1 of Article IV of the Constitution.

The power of Congress to enact this legislation, if such power exists, can only be found in that provision of Clause 4, Section 8, Article 1 of the Constitution which empowers Congress "to establish uniform laws on the subject of bankruptcies throughout the United States." If the Act, when read in connection with the National Bankruptcy Act of 1898, as from time to time amended, and of which it is a part, is not one on the subject of bankruptcies within the meaning of the Constitution, then it can not be sustained.

Undoubtedly, the Constitution vests in Congress the power to pass laws which are territorially uniform, dealing with the relation of creditor and debtor, when the debtor is unable or unwilling to discharge his indebtedness in full. Whatever once may have been the doubt of courts and law writers as to the scope of the phrase "laws on the subject of bankruptcies," as used in the Constitution, it is now settled that this power of Congress is not limited nor circumscribed by the English bankruptcy acts in force at the time of the adoption of the Constitution. Probably the best definition which has ever been given of its scope is found in the discussion of the subject by Mr. Justice Catron in the case of *In Re Klein*, decided in the Circuit Court for the District of Missouri, Federal Case No. 7865, and also

reported in a note to Nelson v. Carland, 1 How. 265, at page 277. He said:

> "It extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is the discharge of a debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress."

This language was quoted with approval in the case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181, in which the court held that the permissible scope of bankruptcy laws under the Federal Constitution is much broader than had been the scope of the English laws on the subject prior to the adoption of the Constitution. That case holds that the subject of bankruptcies under the Constitution includes not only the power to provide for a distribution of the property of the debtor among his creditors, but also the power to provide for a discharge of the debtor from his debts and legal liabilities, and that therefore the power conferred upon Congress by this provision of the Constitution involves the power to impair the obligation of contracts. It also holds that Congress possesses the power to make bankruptcy laws available to debtors, as well as to creditors. Therefore, the bankruptcy provision of the Constitution can not be regarded as a power conferred upon Congress to be exercised solely for the benefit of creditors. Subject to the requirement of uniformity, it is a grant of plenary power over the subject of bankruptcies, and while, of course, Congress, under the pretext of executing this power, can not pass laws dealing with matters not entrusted to the National Government,—*Hammer* v. *Dagenhart*, 247 U. S. 251, *Child Labor Case*, 259 U. S. 20,—yet so long as the legislation is fairly within the constitutional grant, the public policy exemplified therein is exclusively within congressional discretion. Consideration may be given to the rights both of creditors and of distressed debtors, provided only that the consideration extended to either class is not so unjust or arbitrary as to violate fundamental principles of justice or to smack of collusion between the law-making body and the favored class.

A fundamental essential of all bankruptcy laws under the Constitution is the reasonably prompt distribu-

tion among his creditors of the value of the property of the debtor unable or unwilling to pay his debts; but I can not believe that this necessarily requires a sale of the bankrupt's property under competitive bidding. If the law provides for a realization of the fair value of the debtor's property by some other method than by such a sale, and for a distribution among the creditors according to their rights of the sum thus ascertained, the same general purpose is accomplished as would be accomplished by a sale, and therefore it seems to me entirely within the competency of Congress to provide for a determination of the value of the debtor's property subject to distribution by some other method than by a sale under competitive bidding. Hence, there is no constitutional impediment against Congress providing that in a bankruptcy proceeding the actual fair value of the debtor's property subject to distribution shall be ascertained by appraisers appointed by the court, such appraisal to be made under the supervision and subject to the control of the court; nor to prevent Congress from designating the order of priority in which interested parties may be permitted to elect to pay the appraisal price and take the property. Furthermore, there can be no doubt that Congress can validly provide for the payment of this appraisal value within such a reasonable time, or in such installments over such a reasonable time, as it may determine; and it is entirely within the power of Congress to provide that the deferred payments shall not bear interest. Again, there can be no doubt of the power of Congress to require all of the bankrupt's property, including that covered by mortgages or other encumbrances, to be administered in the bankruptcy court, free from the interference of State tribunals; otherwise, the Constitution of the United States and the laws passed in pursuance thereof would not be the supreme law of the land, as they are declared to be in Clause 2 of Article VI of the Constitution.

Measured by these principles, it seems to me that the Act in question deals only with matters within the competency of Congress under the bankruptcy provision of the Constitution. It provides for adjudicating the debtor a bankrupt, and subjects all of his property to the control of the bankruptcy court. It provides for the distribution among his creditors, according to their respective rights, of the value of all of the debtor's property which is subject to his debts. It provides that this value shall be determined by an appraisal, but it is care-

ful to set up ample safeguards against either over-appraisal or under-appraisal of the property. The appraisers are not bound by the market price at the time of the appraisal, but under the Act are free to take into consideration all relevant factors in determining the true value of the property. The right of objections, exceptions and appeal is made available to interested parties. I do not agree with the contention of the bank that the right of court review is granted only as to appraisals of real estate. The Act, in part, provides:

> "The appraisals shall be made in all other respects, with right of objections, exceptions and appeal, in accordance with this Act: Provided, That in case of real estate either party may file objections, exceptions and appeals within one year from the date of order approving the appraisal."

If the only right of court review of appraisals is of appraisals of real estate, then that part of the quoted language preceding the word "provided" is entirely meaningless. The meaning of the quoted language becomes perfectly apparent, however, when we keep in mind the fact that the Frazier-Lemke Act is, as its title declares, "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto." The amendment is, of course, an integral part of the Bankruptcy Act of July 1, 1898, as from time to time amended, and the "right of objections, exceptions and appeal in accordance with this Act," preserved to interested parties, necessarily means such rights as are found in the Bankruptcy Act in its entirety, and that Act as a whole makes ample provision for such court review. No other meaning can possibly be given to the language used, because the Frazier-Lemke Act itself contains no further reference to the right of objections, exceptions and appeal. The language referred to was intended by Congress to have some meaning. Therefore, reading the quoted language with the thought of giving effect to all the words, it seems perfectly plain to me that interested parties may file with the referee objections to the appraisal of any character of property of the debtor, and, if dissatisfied with the ruling of the referee, may file a petition for review by the District Judge, and, if dissatisfied with his action, have same reviewed by the Appellate Court, to the extent that the general bank-

ruptcy act authorizes such review. All of these proceedings questioning the appraisal, according to the plain language of the Act, must be had in the manner prescribed in the general bankruptcy act, and as to all property other than real estate, within the time prescribed by the provisions of that act. As to real estate, the objections, exceptions and appeal may be taken at any time within one year from the date of the order of the referee approving the appraisal. My conclusion that the words "this Act," found in the quoted language, refer to the bankruptcy act in its entirety is re-enforced by the language of Subsection 6, which provides: "Having complied with the provisions of Subsection 3, the debtor may apply for his discharge as provided in this Act"; and by that part of Subsection 7 which provides that after the debtor has complied with its provisions "he may apply for his discharge as provided in this Act"; and by the language of the last sentence of Subsection 7 which reads: "If the debtor fails to comply with the provisions of this subsection the court may order the trustee to sell the property as provided in this Act." As the Frazier-Lemke Act sets out no method by which the debtor may apply for his discharge, nor for the sale of the debtor's property, the language just quoted would have no meaning whatever unless the words "this Act," therein used, refer to the bankruptcy act in its entirety, of which the Frazier-Lemke Act is a part. Hence, the words "this Act," found in Subsections 6 and 7 above referred to and in the provision dealing with appraisals, necessarily refer to the bankruptcy act as a whole. Thus construed, I have no doubt that the method of determining the value of the property of the debtor subject to distribution among his creditors is one fairly calculated to secure for the creditors the full and fair value thereof.

The Act gives to the debtor the sole right to become the purchaser of any part of the property from the trustee at the appraised value thereof, and to pay for same in installments extending over a period of six years, with interest at one per cent; but this right is predicated upon the consent of the lien holders. The fact that the consent of the general creditors and of the trustee is not required can not be taken advantage of by the bank in this case, as it is not a general creditor except as to the excess of its debt over the appraisal value of the property in lien to it; but in my judgment this provision of the Act would be valid even though the consent of no class of creditors were required, provided the terms of

the payment of the appraisal value fixed in Subsection 3 of the Act are not so unreasonable as against creditors as to violate one of the fundamental essentials of bankruptcy acts, viz., the distribution to creditors, within a reasonable time, of the value of the property of the bankrupt subject to distribution; but this question will be discussed later in the opinion in connection with my discussion of Subsection 7. As heretofore indicated, appraisal of the property of the debtor under the safeguards contained in the Act is fairly calculated to secure for creditors a full and fair value of the property. If this is done, no creditor has the right to complain because the debtor is given the sole right to become the purchaser at this price. In bankruptcy proceedings the holder of a lien on property certainly has no constitutional right to demand that he be allowed to become the purchaser of the property covered by his lien. If he is allowed to realize on this property the full value thereof for application to his lien debt, no right of his has been violated. Indeed, I know of no constitutional inhibition against State laws providing that in foreclosure proceedings under State law the value of encumbered property shall be determined by an appraisal under proper safeguards to protect the interest of the lienholder, and giving the debtor the prior right to become the purchaser of the encumbered property at the appraisal price.

Counsel for the bank advanced the suggestion that those provisions of the Act, permitting the debtor to become the purchaser of his property at its appraisal value under the terms therein stated, is, in effect, a composition with his creditors, and therefore do not relate to the subject of bankruptcies within the constitutional sense. I do not think this contention is sound. In the first place, those provisions of the Act are not the equivalent of a composition, because a composition settlement with creditors may or may not result in the distribution of the entire value of the debtor's property to his creditors. His creditors may agree to a composition settlement which will result in the payment of less money than the full value of his property; and if approved by the court, under the present bankruptcy law, the bankrupt is entitled to be repossessed of his property and discharged of his debts, provided he has made a full disclosure of his property and has been guilty of no fraud in connection with the composition settlement. The provisions of the Act referred to, however, when fairly construed, require the debtor, if he takes over

the property under its terms, to pay the full fair value of same as determined by an appraisal under the terms of the Act. Even should those provisions of the Act, however, be construed as the equivalent of a composition settlement, such a construction would not make the Act unconstitutional. Provision for a composition settlement by a bankrupt with his creditors and for revesting him with title to his property and for his discharge upon approval and execution of such settlement, was contained in the Bankruptcy Act of 1874 (18 Statutes at Large, 182), and this provision was held by Circuit Justice Hunt to be a valid exercise of the power of Congress under the bankruptcy clause of the Constitution in the case of *In Re Reiman*, Federal Case No. 11,675. Again, in the case of *Wilmot* v. *Mudge*, 103 U. S. 217, it was held at page 219 that a proceeding under the composition provision of the Bankruptcy Act of 1874 was a proceeding in bankruptcy under that bankruptcy act, and the clear import of that decision is that Congress has the power under the bankruptcy provision of the Constitution to provide for composition settlements in bankruptcy proceedings and for the discharge of the bankrupt after such composition settlement has been approved and complied with. The present bankruptcy act (Section 12) contains a composition provision, and while I know of no case directly upholding its constitutionality, I think such is the necessary deduction to be drawn from the cases of *Cumberland Glass Manufacturing Co.* v. *DeWitt & Co.*, 237 U. S. 447; *Nassau Smelting & Refining Works* v. *Brightwood Bronze Foundry Co.*, 265 U. S. 269, and *Myers* v. *International Trust Co.*, 273 U. S. 380. It is true each of these cases points out that a composition settlement in a certain sense is a substitute for bankruptcy proceedings, as such proceedings are required to be conducted under the Act of 1898; but they each recognize, inferentially at least, the propriety of the inclusion in a bankruptcy statute of a provision for the composition of debts and for a discharge and restoration of the title and possession of the debtor when such composition has been approved and effected. Composition settlements, as authorized by the present Bankruptcy Act, can be sustained on the idea that the sum paid under such a settlement fairly approximates the value of the debtor's property. Before the creditors are called upon to act upon the debtor's proposition of composition, he must submit himself to an examination in open court or at a meeting of his creditors, and file a full schedule of his

property and of his liabilities. It can not be presumed that with this means of informing themselves, the creditors, or a majority of them, would consent to a settlement which would result in securing for themselves a substantially less sum than the fair value of the debtor's property. Such a composition settlement, therefore, substantially accomplishes what is required in all bankruptcy statutes, viz., a distribution of the value of the bankrupt's property among his creditors.

It is contended by counsel for the bank that the Act requires a reduction of the claims of creditors, whether they consent to such reduction or not. Such a conclusion can only result from a superficial consideration of the Act. As I read it, the Act nowhere requires any such scaling down of debts. It devotes the fair value of the entire property of the debtor, other than his exemptions, to the payment of the claims of his creditors. As to secured claims, if the appraisal value of the pledged property is less than the amount of the secured debt, the deficiency, including interest, can be proven as a general claim and participate in the distribution of the appraisal value of the unencumbered property ratably with the other unsecured claims. Of course, when the value of the bankrupt's estate is not sufficient to pay his debts in full, the practical effect of a discharge is to reduce the claims of creditors, but such is the effect of a discharge under any bankruptcy law.

Those provisions of the Act found in Subsections 3, 4, 5 and 6 which I have been discussing, of course, are never called into play except upon request of the debtor, and then only with the consent of the lien holder. If the debtor does not request the privilege of purchasing the property at its appraised value, then I think it clear from the entire Act that the property must be administered under the provisions of the bankruptcy act applicable in ordinary bankruptcy proceedings. Having made his request to purchase, however, and met with refusal or objection by secured creditors, Subsection 7 of the Act provides that the court, after setting aside the debtor's exemptions as prescribed by State law—

> ". . . shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession, the first pay-

ment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: Provided, That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: Provided, however, that the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.

"If the debtor fails to comply with the provisions of this subsection the court may order the trustee to sell the property as provided in this Act."

This subsection postpones the right of sale of the debtor's property for five years, with the privilege to the debtor during that time to occupy and use same, provided he pays a reasonable rental therefor, and to become the purchaser thereof at any time during that period, as therein provided. Certainly Congress has the power to prohibit the sale of the assets of a bankrupt for a reasonable length of time after the court takes possession of same, and to authorize the trustee or other representative of the creditors, or officer of the court, to rent same during the waiting period. If it possesses this power, why may not Congress authorize the property to be rented to the debtor? Possessing the power to delay the sale of a bankrupt's assets, and to authorize the rental thereof in the meanwhile to the debtor, why may not Congress also provide that at the end of the waiting period, or prior thereto, the debtor may become the purchaser of the property by paying in cash the appraisal value thereof? Frankly, I can see no constitutional impediment to such legislation on the part of Congress, if that body deems it in the furtherance of sound public policy.

The Act is careful to make provision to protect the creditors, in event real estate increases in value after

the appraisal made under Subsection 1 and before the debtor exercises his option to purchase under Subsection 7. It provides that at the request of any lien holder on real estate the court shall cause a reappraisal of such real estate, and the debtor, if he desires to take over the property, must pay the reappraisal price, if acceptable to the objecting lien holder, or otherwise he must pay the original appraisal price. Of course, this simply means that if he desires to avail himself of the right to purchase the property under Subsection 7, the debtor must pay the original appraisal price or the reappraisal price, whichever is the greater.

I think the bank is in error in its contention that no provision is made for the reappraisal of unencumbered real estate. The reappraisal provision must be read in the light of that provision found in Subsection 2, which declares that the property of which the debtor retains possession, under the control of the court, shall be subject to a general lien as security for the payment of the value thereof to the trustee of the creditors, if a trustee is appointed, such lien to be subject to and inferior to all prior liens, pledges or encumbrances. Thus, when the debtor takes possession of his property under Subsection 2, the law not only continues in force the liens then against same, but also places it in lien to the trustee for the benefit of all creditors. Therefore, the trustee is undoubtedly a lien holder within the meaning of the reappraisal provision of Subsection 7. He is such a lien holder, not only on encumbered real estate of the debtor, but on the unencumbered real estate as well, and, being such a lien holder, he is granted the right to demand a reappraisal of the real estate of the debtor before the debtor can become a purchaser thereof under Subsection 7. It is true the Act makes no provision for the reappraisal of personal property, but I can not see that this fact affects the validity of the Act. Indeed, I do not think the validity of the Act would be affected had it made no provision for the reappraisal of any of the property. I do not doubt the power of Congress to provide that one appraisal made at the beginning of the proceedings by impartial appraisers, free to give consideration to all relevant factors of value, with right of judicial review, shall be binding upon all interested parties.

I am not impressed with the contention of the bank that the waiting period of five years, provided for in Subsection 7, cancels all interest on its mortgage which

would otherwise accrue during that period. Such is not the necessary effect of the Act, although it may be its incidental effect. It cancels no interest; the debt continues to draw interest. As a matter of fact, if at the date of the original appraisal the value of the property in lien is not sufficient to pay the principal debt and interest but during the waiting period so increases in value that on a reappraisal it will satisfy the principal and interest the lien creditor has been the gainer. On the other hand, of course, if the property has not increased in value, the creditor has lost interest on the principal sum during the waiting period. Such might easily be the effect, however, of any law which permits property sold under foreclosure to be sold on time without interest on deferred payments. The Act provides that during the waiting period the debtor may occupy and use the property only upon condition that he pays a reasonable annual rental, which shall be distributed to the creditors according to their rights in the property. Under this provision the court is not required to fix the annual rental at one time, and in advance, for the entire five year period, but the rental may be adjusted annually. Furthermore, inasmuch as the debtor holds the property subject to the control of the court, I have no doubt that the court is authorized under the Act to require, not only such security for the payment of the rent, but for the upkeep and protection of the property, as in its judgment may be deemed to the interest of creditors and fair to the debtor. Even if it be conceded that Congress can not validly provide for a waiting period without making provision for the probable loss of interest to the creditors during such waiting period, it seems to me that Congress might reasonably assume that on the whole the provision for the payment of rental, coupled with the power of the court to prevent waste and to require upkeep, would compensate for the loss of interest. Certainly there is no proof that such would not be the result in this case.

It is true that at the end of the waiting period of five years the debtor may decide not to take the property, in which event the trustee is required under the Act to sell it in accordance with the provisions of the general bankruptcy act; but I can not see that this provision renders the Act invalid. We have already seen that Congress may properly provide for a reasonable waiting period before the sale of property in bankruptcy proceedings, and authorize its rental during such period.

If the debtor decides not to take the property at the end of the waiting period, then the result of the proceedings under Subsection 7 in such a case is substantially the same as if the Act had simply prohibited the sale of the property for five years from the date of adjudication and authorized the rental of it during that period of time.

Is the waiting period of five years such an unreasonable delay in the distribution of the property of the bankrupt to his creditors as to amount to a denial of due process? It seems to me that this resolves itself into the question of whether such a period of delay substantially denies to the creditors the right of a distribution of the bankrupt's assets. It must be accepted that it was the judgment of Congress that it does not, and this judgment must be weighed in the light of the conditions confronting Congress when the law was enacted. Courts may take judicial notice of universally recognized facts. At the time this legislation was enacted the Nation was going through the severest financial depression in its entire history. Values of all property, and particularly of farm property, had not only sunk to unprecedented levels, but there was no market for it even at these levels. In legislating on matters committed to it by the Constitution, Congress undoubtedly may give thought to public policy and the general welfare. Within the scope of its delegated powers it may legislate for the general welfare, just as States may do under their police power. *The Lottery Case*, 188 U. S. 321; *Hipolite Egg Co.* v. *United States*, 220 U. S. 45; *Caminetti* v. *United States*, 242 U. S. 470. Unquestionably, it is desirable that the sacrifice of farm property and the dispossession of farmers shall be avoided, so far as constitutionally may be done with fairness to others, during an emergency such as now prevails. It was the judgment of Congress that through the medium of bankruptcy proceedings the farmer should be given five years within which to rehabilitate himself and save his property. Discretion on this subject, within constitutional bounds, rests with Congress, and I am not prepared to say that these bounds have been exceeded in the legislation under consideration.

It seems to me that the claim of the bank that the Act violates Section 1 of Article IV of the Constitution, in that it denies full faith and credit to the judgment of the Kentucky Court decreeing foreclosure of its mortgage, is entirely without merit. There is withdrawn from the State Court only the power to enforce

this judgment. The power of Congress under the bankruptcy clause to administer on and distribute all of a bankrupt's property necessarily embraces the power to halt State Court proceedings against the bankrupt's property, where those proceedings have not resulted in divesting the bankrupt of his title and vesting it in a purchaser for value. The present general bankruptcy act (Section 67) provides that all levies, judgments, attachments or other liens obtained through legal proceedings against a person who is insolvent at any time within four months prior to the filing of a petition in bankruptcy against him shall be deemed null and void, in case he is adjudged a bankrupt, and that the property affected by the levy, judgment, attachment or other lien shall be deemed wholly discharged and released from the same, unless the bankruptcy court shall order same to be preserved for the benefit of the bankrupt's estate. This provision of the statute has been invoked literally thousands of times to set aside judgment liens not based on contracts, and no court, so far as I am advised, has ever held that the statute violates the full faith and credit clause of the Constitution. It can not be doubted that a discharge in bankruptcy applies to judgments, as well as to claims which have not been reduced to judgment. To limit the power of Congress under the bankruptcy provision of the Constitution by such a construction of the full faith and credit clause as is contended for here would not only render it practically impossible for Congress to pass any bankruptcy law extending to debtors the right of discharge, but in many cases would make it possible for a vigilant creditor, by State Court proceedings, to secure an undue proportion of the bankrupt's estate.

Counsel for the bank suggest, but I do not understand that they seriously contend, that the Act, because it applies only to farmers and to debts existing at the time it became effective, is not uniform, as is required by the bankruptcy clause of the Constitution. Uniformity, as required by this provision of the Constitution, means territorial uniformity—not uniformity as between persons or classes of persons. *Hanover National Bank* v. *Moyses*, 186 U. S. 181; *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. 637 (6th Cir.). The Act meets this test of uniformity.

For me this case has been one of unusual difficulty. I approached its consideration with a very definite conviction of its unconstitutionality. Frankly, I regret that on more mature deliberation I can not conscientiously

adhere to that view. I consider the legislation, in some of its provisions, unfair to creditors and unwise even as to farmer debtors, for it inevitably closes to them all private sources of long-time credit. These matters, however, involve questions of policy, which address themselves to Congress—not to the courts.

An order conforming to the views here expressed may be prepared and presented for entry.

CHAS. I. DAWSON,
Judge.

PETITION—Filed Nov. 30, 1934.

The bankrupt, William W. Radford, Sr., hereby petitions the Court that all of his property, whether pledged, encumbered or unencumbered by liens or otherwise, be appraised, and that his exemptions as prescribed by the law of the State of Kentucky, subject to any liens thereon, be set aside, and that he be allowed to retain possession of any part or parcel, or all of the remainder, of his property, and pay for the same under the terms and conditions set forth under Sub-section (s) of Section 75 of the Bankruptcy Act.

Frank Rives,
David A. Sachs, Jr.,
Edwin A. Krauthoff,
Attorneys for William W. Radford, Sr., Bankrupt.

ORDER—Entered November 30, 1934.

At Louisville, in said Western District of Kentucky on November 30, 1934, before the undersigned Referee in Bankruptcy.

At a regular first meeting of creditors this day held, ten days notice thereof having been given to all scheduled creditors and parties in interest, and appearing William W. Radford, Sr., the bankrupt herein and being duly sworn according to law was examined in open Court by the Referee and counsel for parties in interest.

And thereupon said Radford filed a petition which is in words and figures as follows, to wit:

> The bankrupt, William W. Radford, Sr., hereby petitions the Court that all of his property, whether pledged, encumbered or unencumbered by liens or otherwise, be appraised, and that his exemptions as prescribed by the law of the State of Kentucky, subject to any liens thereon, be set aside, and that he be allowed to retain possession of any part or parcel, or all of the remainder, of his property, and pay for the same under the terms and conditions set forth under Sub-section (S) of Section 75 of the Bankruptcy Act.

And the Referee being advised, it is ordered that L. J. Harris, Fred Jackson and Lucian A. Moseley of Christian County, Kentucky, be, and hereby they are, designated and appointed as appraisers to appraise all of the property, whether pledged, encumbered or unencumbered, of the bankrupt, William W. Radford, Sr., and they are hereby ordered and directed to appraise all the property of the said William W. Radford, Sr., at its then fair and reasonable value, not necessarily the market value, at the time of such appraisal, and make report of such appraisal with all convenient speed back to this Court, to all of which Louisville Joint Stock Land Bank objects and excepts.

And thereupon it is ordered by the Court that this meeting be, and it is adjourned to 9:30 o'clock A. M. at the office of the undersigned Referee, 223 Federal Building, Louisville, Kentucky, on December 1, 1934, for all general purposes of the estate.

AFFIDAVIT—Filed Dec. 1, 1934.

The affiants, L. J. Harris, Fred Jackson and Lucian Moseley, being duly sworn upon their oaths state that they will well and truly appraise all of the property of the debtor, William W. Radford, Sr., consisting of the personal property of the said debtor not exempt to him, and the real estate owned by the debtor in Christian County, which is subject to a mortgage to Louisville Joint Stock Land Bank, at its fair and reasonable value, but shall not necessarily be its present market value, and any other property discovered to us.

L. J. Harris,
Fred Jackson,
Lucian Moseley.

Subscribed and sworn to before me by L. J. Harris, Fred Jackson and Lucian Moseley, on this the 30th day of November, 1934. My commission expires the 27th day of July, 1935.

Hattie C. Wood,
Notary Public Christian
County, Ky.

(Seal)

REPORT OF APPRAISERS—Filed Dec. 1, 1934.

We, the undersigned appraisers, upon our oaths taken heretofore, do hereby appraise a fair and reasonable value of the property of the bankrupt, William W. Radford, Sr.

We fix the appraised value of the tract of land situated just South of Howell, Kentucky, on both sides of the Palmyra Road, containing 140 acres more or less, at.....$4,200.00

The 24½ acres of woodland, about two miles South of said tract, at..... 245.00

We appraised the one-half interest of said debtor in a lot of about one-half an acre, with a small house on same, between Howell and said farm, same owned jointly by debtor and Mrs. W. A. Haynes, at..... 150.00

We appraised and set aside to the debtor the following property, to-wit:

Household and kitchen furniture.....	$175.00
Two mules	160.00
One Wagon	35.00
One-half interest in four jersey cows....	40.00
One-half interest in four calves.....	10.00
Harness for mules	10.00
Two plows	10.00
Twenty bushels of corn for bread stuff for family	12.00
One-half interest in four fattening hogs	20.00
One hundred bushels of corn for feed for stock	60.00
One-half interest in four tons of hay....	36.00
Making total set aside to him as exempt.	$568.00

We appraised the balance of the personal property as follows, to-wit:

One-half interest in twelve cows.....	$120.00
One-half interest in eight calves.....	10.00
One-half interest in eight sows.....	30.00
One-half interest in fourteen hogs.....	70.00
One-half interest in five pigs.....	7.50
One horse eighteen years old.....	25.00
One wagon	35.00
One-half interest in 7½ acres dark tob..	250.00
One-half interest in 1 acre of burley " ..	35.00
One-half interest in 380 bushels of corn.	114.00
One-half interest in 12 tons of hay.....	60.00
One-half interest in Case Tractor, plows, and disc, four years old.....	125.00
One binder, one mower, one plow.....	50.00
Making total personal property.....	$831.50

L. J. Harris,
Fred Jackson,
Lucian Moseley.

Order

Subscribed and sworn to before me by L. J. Harris, Fred Jackson and Lucian Moseley, on this the 30th day of November, 1934. My commission expires the 27th day of July, 1935.

Hattie C. Wood,
Notary Public Christian
County, Ky.

(Seal)

ORDER—Entered Dec. 1, 1934.

At Louisville, in said District, on December 1, 1934, before Nat C. Cureton, Referee in Bankruptcy.

At a regularly adjourned creditors' meeting this day held and appearing William W. Radford, Sr., the bankrupt, in person and by counsel and Louisville Joint Stock Land Bank by counsel and the Court being advised, it is hereby ordered that the report of the appraisers this day tendered be and the same is hereby filed and counsel for the bankrupt does hereby except to the said report of said appraisers for the reason that upon the face of the report it does not affirmatively appear that the reasonable value of the property as fixed by the appraisers is in excess of or is less than the market value of said property and does ask that said report of appraisers be returned for correction accordingly and said exceptions are thereupon overruled by the Court to which ruling the bankrupt excepts and files exceptions thereto. Louisville Joint Stock Land Bank by counsel excepts to said report, which exceptions are overruled by the Court.

And thereupon the Louisville Joint Stock Bank in open Court offered to pay for said property upon which it has a mortgage the following sums in cash:

1. $7,063.43 with interest thereon from March 1, 1932 at the rate of 6% per annum
2. $891.21 with interest thereon from September 1, 1932 at the rate of 6% per annum

the aggregate of which sums is the amount of its mortgage debt as set forth in its answer filed herein.

And thereupon the counsel for the bankrupt admitted that Louisville Joint Stock Land Bank has a valid lien on the mortgaged property for the amount so offered to be paid in cash and that under the law all money paid in by the bank in cash would be immediately returned in satisfaction of its mortgage debt, if such offer be accepted.

It appearing that L. J. Harris, one of the appraisers appointed by the Court is Master Commissioner of Christain Circuit Court and familiar with the value of real estate in Christain County; that Fred Jackson, one of the appraisers is County Tax Commissioner of Christain County and as such is familiar with the value of real estate in said County and that Lucian Mosely, one of the appraisers is a farmer, of Christian County and is familiar with the value of real estate in said County, the Court is of the opinion that the report of the appraisers filed herein be and the same is hereby approved and that the fair and reasonable value of the mortgaged property but not necessarily its market value is $4445.00 as fixed by the appraisers.

Thereupon counsel for the bankrupt moved the Court to return the appraisement to the appraisers with instruction to state separately the fair and reasonable value of the property and the real estate on which the bank has a mortgage and the market value of such real estate so that it might be determined whether the appraisement made by the appraisers was in excess of the market value of the property or less than the market value thereof and counsel having been heard, the Court overrules said motion.

Thereupon counsel for the bankrupt further moved the Court to continue this hearing to give counsel an opportunity to give testimony of the appraisers of their theory on which they made their appraisement herein, which motion is overruled. To all of which the counsel for the bankrupt excepts and objects. Louisville Joint Stock Land Bank objects to the fixing the fair and reasonable market value of said mortgaged property at $4445.00.

Thereupon it is ordered that this meeting for all general purposes of the estate be and the same is adjourned to December 18th 1934 at 9:30 o'clock A. M. in the office of the Referee, Louisville, Kentucky.

Nat C. Cureton,
Referee in Bankruptcy.

ORDER—Entered Dec. 1, 1934.

At Louisville in said District on December 1, 1934, at a regularly adjourned creditors' meeting held before the undersigned Referee in Bankruptcy, it appearing that all of the real estate of the debtor, William W. Radford, Sr., is mortgaged to Louisville Joint Stock Land Bank and, under the law of Kentucky, the debtor is entitled to no exemptions of real estate under such circumstances, and the Referee being advised, it is ordered as follows:

(1) The Debtor is not entitled to and shall not have any exemption of real estate, and hence no exemption of real estate is set aside to him.

(2) The following personal property is set aside to the Debtor as his exemptions as prescribed by the Kentucky law:

Household and kitchen furniture	$175.00
Two mules	160.00
One wagon	35.00
One-half interest in four jersey cows	40.00
One-half interest in four calves	10.00
Harness for mules	10.00
Two plows	10.00
Twenty bushels of corn for bread stuff for family	12.00
One-half interest in four fattening hogs	20.00
One hundred bushels of corn for feed for stock	60.00
One-half interest in four tons of hay	36.00
Making total set aside to him as exempt	$568.00

To all of which Louisville Joint Stock Land Bank objects and excepts.

Nat C. Cureton,
Referee in Bankruptcy.

ORDER—Entered Dec. 1, 1934.

At Louisville in said District on December 1, 1934, at a regularly adjourned creditors' meeting held before the undersigned Referee in Bankruptcy, the Referee being advised, it is hereby ordered that the possession, subject to the control of the Referee of the District Court of the United States for the Western District of Kentucky, of the following described property:

Those certain tracts of land of 93⅜ acres, 53 acres and 25 acres located 12 miles south of Hopkinsville on the Palmyra Road and more fully described as follows:

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893 from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustee of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93⅜

acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed by W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jesse Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid.

shall remain in William W. Radford, Sr., subject to a general lien, as security for the payment of the value thereof to the Trustee of the creditors, such lien to be subject to and inferior to all prior liens or encumbrances; to all of which Louisville Joint Stock Land Bank objects and excepts.

Nat C. Cureton,
Referee in Bankruptcy.

ORDER—Entered Dec. 1, 1934.

At a regularly adjourned creditors' meeting this day held, it appearing to the Court that it is necessary that a Trustee qualify herein, creditors being called upon to nominate a Trustee and failing so to do, it is ordered by the Court that H. M. Kessler be and he is now appointed Trustee herein and ordered and directed to execute a Trustee's bond in the su mof $500.00 with personal surety.

REQUEST OF DEBTOR—Filed Dec. 1, 1934.

The Bankrupt, William W. Radford, Sr. hereby requests the Trustee in Bankruptcy herein to agree to sell to William W. Radford, Sr., the following described property under the terms and conditions set forth in Subsection (s), paragraph 3 of Section 75 of the Bankruptcy Act:

Those certain tracts of land of 93⅜ acres, 53 acres and 25 acres located 12 miles south of Hopkinsville on the Palmyra Road and more fully described as follows:

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres,

more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893, from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustee of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93⅜ acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jesse Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake;

thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid.

William W. Radford, Sr.

REFUSAL OF MORTGAGEE—Filed Dec. 1, 1934.

The Louisville Joint Stock Land Bank, creditor and mortgagee of William W. Radford, Sr., hereby refuses to give its consent as a lienholder of a lien upon the property of William W. Radford, Sr., described in his request to the Trustee filed herein to agree to sell to him the mortgaged property, and the Louisville Joint Stock Land Bank hereby files this its written objection to sueh sale and to the manner of payments and distribution of William W. Radford, Sr.'s, property as provided for in Subsection (s) of Section 75 of the Bankruptcy Act.

Louisville Joint Stock Land Bank,
By John E. Tarrant,
Counsel.

PETITION—Filed Dec. 1, 1934.

The bankrupt, William W. Radford, Sr., hereby represents that he has requested the Trustee in Bankruptcy to agree to sell to him the part of the bankrupt estate mortgaged to the Louisville Joint Stock Land Bank, at the value and upon the terms and conditions set forth in Subsection (s), Paragraph (3) of Section 75 of the Bankruptcy Act; that the lienholder, Louisville Joint Stock Land Bank, has refused to give its consent thereto, and as a secured creditor of said William W. Radford, Sr., it has filed written objections to the manner of payments and distribution of William W. Radford, Sr.'s, property as provided in said Subsection (s).

The bankrupt, William W. Radford, Sr., thereupon prays the Court to enter the necessary final orders or judgments, which shall provide that all proceedings by the Louisville Joint Stock Land Bank against William W. Radford, Sr., be stayed for a period of five years from this date; that during said five year period, William W. Radford, Sr., shall retain possession of that part of his property upon which the Louisville Joint Stock Land Bank holds a mortgage, and that the Referee or the Court shall fix a reasonable rental to be paid annually by said William W. Radford, Sr., for that part of the property of which he retains possession, to-wit: said property mortgaged to the Louisville Joint Stock Land Bank.

Frank Rives,
David A. Sachs, Jr.,
Edwin A. Krauthoff;
Counsel for William W. Radford, Sr.

ORDER—Entered Dec. 1, 1934.

At Louisville in said District on December 1, 1934, at a regularly adjourned creditors' meeting held before the undersigned Referee in Bankruptcy, this cause coming on to be heard, upon the request of William W. Radford, Sr., that the Trustee in Bankruptcy shall agree to sell to him a certain portion of the bankrupt estate, and the Louisville Joint Stock Land Bank as a lienholder and secured creditor of said bankrupt having refused its consent to the bankrupt's request, and having filed written objections to the manner of payments and distribution of the said bankrupt's property, as provided for in the Bankruptcy Act, and it being stipulated that the annual taxes and insurance premiums amount to $105.00, and the Court being advised, it is ordered, adjudged and decreed as follows, to-wit:

(1) That all proceedings against William W. Radford, Sr., for the enforcement of any lien against the following described property be, and the same hereby are, stayed for a period of five years from this date:

(2) That the Louisville Joint Stock Land Bank be, and hereby it is, enjoined and restrained from proceeding in this Court, or in any other Court, for a period of five years from this date, to enforce any lien which it has, or may have, against the following property of said William W. Radford, Sr.:

Those certain tracts of land of 93⅜ acres, 53 acres and 25 acres located 12 miles south of Hopkinsville on the Palmyra Road and more fully described as follows:

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville &

Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893, from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustee of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93⅜ acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jesse Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed

of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid:

(3) During a period of five years from this date, William W. Radford, Sr., shall retain possession of the above described property under the control of this Court, provided he pays $325 as a reasonable rental for the first year for the said property of which he retains possession, which sum is hereby fixed as a reasonable rental to be paid by him, for the 1st year and the payment of such rental shall be made to the Trustee of the bankrupt on or before the 1st day of May, 1935.

The payment of rental for each subsequent year to be fixed by the court and paid to the Trustee of the bankrupt herein; to all of which Louisville Joint Stock Land Bank objects and excepts.

Nat C. Cureton,
Referee in Bankruptcy.

PETITION FOR REVIEW OF REFEREE'S ORDERS

—Filed Dec. 1, 1934.

To the Honorable Nat C. Cureton, Referee in Bankruptcy:

Your petitioner, Louisville Joint Stock Land Bank, respectfully shows:

That your petitioner is a lien creditor of the estate herein in the sum of (1) Seven Thousand Sixty-three Dollars and Forty-three Cents ($7,063.43), together with interest thereon at the rate of six per cent (6%) per annum from March 1, 1932, until paid, less a credit of Nine Dollars and Fifty-five Cents ($9.55), and (2) Eight Hundred Ninety-one Dollars and Twenty-one Cents ($891.21), together with interest thereon at the rate of

six per cent (6%) per annum from September 1, 1932, until paid, for which sums your petitioner has asserted a claim in its answer heretofore filed herein.

That on November 30, 1934, and December 1, 1934, orders, copies of which are hereto annexed, were made and entered herein, which orders, and each of them, were and are erroneous in the following particulars, to-wit:

(1) The Court erroneously appointed appraisers herein and directed them to appraise all of the property of the bankrupt at its then fair and reasonable value, not necessarily the market value.

(2) The Court erroneously ordered that possession of the property mortgaged to the petitioner should remain in the bankrupt, subject to a general lien, as security for the payment of the value thereof to the Trustee of the creditors, such lien to be subject to and inferior to all prior liens and encumbrances.

(3) The Court erroneously ordered that all proceedings against the bankrupt for the enforcement of any lien against the property mortgaged to your petitioner be stayed for a period of five years from December 1, 1934.

(4) The Court erroneously ordered that your petitioner be enjoined and restrained and erroneously enjoined and restrained your petitioner from proceeding in this Court, or in any other Court, for a period of five years from December 1, 1934, to enforce its lien against the bankrupt's property mortgaged to it.

(5) The Court erroneously ordered that during a period of five years from December 1, 1934, the bankrupt should retain possession of the property mortgaged to your petitioner under the control of the Court, provided that he paid a rental of $325 as a reasonable rental for said property for the first year, and a rental to be fixed by the court for subsequent years.

(6) The Court erroneously fixed as a reasonable rental to be paid by the bankrupt for the property mortgaged to your petitioner the sum of $325 for the first year.

(7) Section 75 of the Bankruptcy Law under which said orders complained of were entered is unconstitutional because (1) it is not a law on the subject of bankruptcies and (2) it deprives your petitioner of its property without due process of law.

(8) The Court erroneously fixed the value of the bankrupt's property mortgaged to your petitioner at

$4,445, because said property has a reasonable market value in excess of said sum, and your petitioner has offered and hereby offers to pay for said property the full amount of its aforesaid mortgage indebtedness thereupon.

Wherefore, your petitioner, feeling aggrieved because of such orders, prays that the same may be reviewed as provided in the Bankruptcy Law and General Order XXVIII and otherwise.

Louisville Joint Stock Land Bank,
By John E. Tarrant,
Counsel.

Copies of all of the orders entered by the Referee on November 30, 1934, and December 1, 1934, and hereinbefore printed in full on pages 68 to 82 were attached to and made a part of the Louisville Joint Stock Land Bank's petition for review of the Referee's orders.

CERTIFICATE OF REFEREE CURETON ON PETITION FOR REVIEW—Filed Dec. 3, 1934.

To the Honorable Charles I. Dawson, District Judge:

I, Nat C. Cureton, the Referee in charge of this proceeding do hereby certify:

That, in the course of such proceeding, orders, copies of which are annexed to the petition hereinafter referred to, were made and entered on the 30th day of November, 1934 and 1st day of December, 1934.

That, on the 1st day of December, 1934, the Louisville Joint Stock Land Bank, a creditor herein, feeling aggrieved thereat, filed a petition for review, which was granted.

The question presented on this review is:

Certificate of Referee Cureton on Petition for Review

Did or did not the Referee err in entering the orders complained of by Louisville Joint Stock Land Bank?

I hand up herewith for the information of the Judge the following papers:

1. The petition on which this review is granted.
2. All other papers which appear pertinent to this review.

Respectfully certified,

Nat C. Cureton,
Referee in Bankruptcy.

The Referee certified to the Honorable Charles I. Dawson, Judge of the United States District Court for the Western District of Kentucky, Louisville Joint Stock Land Bank's petition for review which is hereinbefore printed on pages 82 to 84 and all of the orders and other papers which are hereinbefore printed in full on pages 68 to 82.

ORDER—Entered Dec. 4, 1934.

This cause coming on for hearing on the petition of the Louisville Joint Stock Land Bank for review of the orders of the Referee entered on November 30, 1934, and December 1, 1934,

(1) Appointing appraisers and directing them to appraise all of the property of the bankrupt at its then fair and reasonable value, not necessarily the market value; and

(2) Ordering that possession of the mortgaged property should remain in the bankrupt, subject to a general lien, as security for the payment of the value thereof to the Trustee of the creditors, such lien to be subject

to and inferior to all prior liens and encumbrances; and

(3) Ordering that all proceedings against the bankrupt for the enforcement of any lien against the mortgaged property be stayed for a period of five years from December 1, 1934; and

(4) Ordering that Louisville Joint Stock Land Bank be enjoined and restrained and enjoining and restraining Louisville Joint Stock Land Bank for proceeding in this Court, or any Court, for a period of five years from December 1, 1934, to enforce its lien against the bankrupt property mortgaged to it; and

(5) Ordering that during such period of five years from December 1, 1934, the bankrupt should retain possession of the mortgaged property under the control of the Court, provided that he pay a rental of Three Hundred Twenty-five Dollars ($325) for said property for the first year and a rental to be subsequently fixed by the Court for subsequent years; and

(6) Fixing as a reasonable rental value to be paid by the bankrupt for the mortgaged property the sum of Three Hundred Twenty-five Dollars ($325); and

(7) Holding Section 75 of the Bankruptcy Law constitutional; and

(8) Fixing the value of the bankrupt's mortgaged real estate at Four Thousand Four Hundred Forty-five Dollars ($4,445).

And the Court, being advised, is of the opinion that Section 75 of the Bankruptcy Act is constitutional and that said orders, and each of them, entered by the Referee are proper.

It is, therefore, ordered that the action of the Referee in entering each of the orders complained of be, and the same is, in all things approved and affirmed except that the Court permits the bankrupt to offer an amended report of the appraisers which is ordered filed and approved to all of which the Louisville Joint Stock Land Bank objects and excepts but said exception is not based on said amended report being filed before the Court and not before the Referee.

Chas. I. Dawson,
Judge.

AMENDED REPORT OF APPRAISERS—Filed Dec 4, 1934.

We, the undersigned appraisers, upon our oaths, do hereby appraise the fair and reasonable value of the property of the debtor, William W. Radford, Sr., as follows:

We fix the fair and reasonable value of the property of the debtor on which Louisville Joint Stock Land Bank has a mortgage, at, Forty-four hundred forty-five & no/100 ..... $4445.00

We fix the market value of said land at $4445.00

We appraised the one-half interest of said debtor in a lot of about one-half an acre, with a small house on same, between Howell and said farm, owned jointly by debtor and Mrs. W. A. Haynes, at 150.00

We appraised and set aside to debtor the following property, to-wit:

Household and kitchen furniture	175.00
Two mules	160.00
One Wagon	35.00
One-half interest in four jersey cows	40.00
One-half interest in four calves	10.00
Harness for mules	10.00
Two plows	10.00
Twenty bushels of corn for bread stuff for family	12.00
One-half interest in four fattening hogs.	20.00
One hundred bushels of corn for feed for stock	60.00
One-half interest in four tons of hay.	36.00
Making total set aside to him as exempt.	$568.00

We appraised the balance of the personal property as follows, to-wit:

One-half interest in twelve cows	120.00
One-half interest in eight calves	10.00
One-half interest in eight sows	30.00
One-half interest in fourteen hogs	70.00
One-half interest in five pigs	7.50
One horse, eighteen years old	25.00
One Wagon	35.00
One-half interest in 7½ acres dark tobacco	250.00

Amended Report of Appraisers

One-half interest in 1 acre of burley tob.	35.00
One-half interest in 380 bushels of corn.	114.00
One-half interest in 12 tons of hay.....	60.00
One-half interest in Case Tractor, plows, and disc, four years old.....	125.00
One binder, 1 mower, 1 plow.....	50.00
Making total personal property.....	$831.50

L. J. Harris,
Fred Jackson,
Lucian Moseley,
Appraisers.

PETITION FOR APPEAL—Filed Dec. 4, 1934.

Louisville Joint Stock Land Bank petitions the Court for an appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the order entered herein on November 14, 1934, overruling the objections of Louisville Joint Stock Land Bank to this proceeding, adjudicating William W. Radford, Sr., a bankrupt, and referring the proceeding to Nat C. Cureton, Referee in Bankruptcy, for the reasons and in the particulars specified in the assignment of errors which is filed herewith and prays that its appeal may be allowed, that a transcript of the record, proceedings and papers on which the appeal was taken be duly authenticated and sent to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, and that said order be reversed in the particulars specified in said assignment of errors.

John E. Tarrant,
Counsel for Louisville Joint
Stock Land Bank.

ASSIGNMENT OF ERRORS—Filed Dec. 4, 1934.

Louisville Joint Stock Land Bank (hereinafter called the Bank) files this its assignment of errors herein and says that the Court erred in the following particulars, to-wit:

(1) The Court erred in overruling the objections of the Bank to this proceeding.

(2) The Court erred in adjudging William W. Radford, Sr., a bankrupt.

(3) The Court erred in referring this proceeding to Nat C. Cureton, the Referee in Bankruptcy, to take such proceedings as were authorized by the National Bankruptcy Act as amended by the Act of June 28, 1934.

(4) The Court erred in holding constitutional Section 75 of the National Bankruptcy Act.

(5) The Court erred in holding constitutional the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act, which amendment is the so-called Frazier-Lemke Act.

(6) The Court erred in holding the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act to be a law on the subject of bankruptcies, and not to be in violation of the Due Process Clause of the Fifth Amendment to the Federal Constitution.

John E. Tarrant,
Counsel for Louisville Joint
Stock Land Bank.

BOND.

Know All Men by These Presents that Louisville Joint Stock Land Bank as principal and Fidelity & Deposit Company of Maryland as surety are held and firmly bound unto William W. Radford, Sr., bankrupt, in the sum of Five Hundred Dollars ($500) to be paid to William W. Radford, Sr., bankrupt, to which payment

well and truly to be made we bind ourselves, our successors and assigns by these presents.

The condition of this obligation is such that whereas Louisville Joint Stock Land Bank has prosecuted an appeal to the United States Circuit Court of Appeals for the Sixth Circuit to revise an order entered on November 14, 1934, in the above styled cause by the District Court of the United States for the Western District of Kentucky.

Now, Therefore, if Louisville Joint Stock Land Bank shall prosecute its said appeal and effect and answer all damages and costs if it fails to make good its appeal, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

Executed this December 4, 1934.

Louisville Joint Stock Land Bank,
By J. C. Englehard,
Vice-President.

Fidelity & Deposit Company of Maryland,
By J. Morton Morris,
Vice-President and
Attorney-in-Fact.

Approved December 4, 1934.
Chas. I. Dawson,
Judge.

ORDER GRANTING AN APPEAL TO LOUISVILLE JOINT STOCK LAND BANK—Entered Dec. 4, 1934.

The lien creditor, Louisville Joint Stock Land Bank, having this day presented its petition for review, assignment of errors and an appeal bond in the penal sum of Five Hundred Dollars ($500) praying an appeal to the United States Circuit Court of Appeals for the Sixth Circuit from an order entered herein on November 14,

Order Granting an Appeal, Etc.

1934, in the particulars specified in its assignment of errors, and the Court being sufficiently advised

It is ordered that (1) the said bond be, and the same hereby is, approved, (2) the said assignment of errors and petition for an appeal be and are each filed and (3) the appeal of Louisville Joint Stock Land Bank to the United States Circuit Court of Appeals for the Sixth Circuit be, and the same hereby is, granted.

Chas. I. Dawson,
Judge.

STIPULATION—Filed Dec. 4, 1934.

To the Clerk of the United States District Court for the Western District of Kentucky.

Dear Sir:

The foregoing transcript of record for use in the United States Circuit Court of Appeals for the Sixth Circuit in the matter of William W. Radford, Sr., bankrupt, wherein the lien claimant, Louisville Joint Stock Land Bank, is appellant and the bankrupt, William W. Radford, Sr., is appellee, has been jointly prepared by counsel for Louisville Joint Stock Land Bank and William W. Radford, Sr., and this is your authority for treating the foregoing transcript of record as the record upon the appeal and for certifying it accordingly.

Issuance and service of citation are hereby waived.

John E. Tarrant,
Counsel for Louisville Joint Stock Land Bank, Appellant.

David A. Sachs, Jr.,
Frank Rives,
Edwin A. Krauthoff,
Counsel for William W. Radford, Sr., Appellee.

CLERK'S CERTIFICATE.

United States of America,
Western District of Kentucky. } ss.

I, Lilburn Phelps, Clerk of the District Court of the United States for the Western District of Kentucky, do hereby certify that the foregoing transcript of record consisting of 91 pages constitutes a full, true and complete transcript of the record and proceedings in said Court in the Matter of William W. Radford, Sr., Bankrupt, as the same appears of record and on file in my said office and pursuant to the stipulation of counsel filed herein.

Witness my hand and official seal of said Court this December 4, 1934.

Lilburn Phelps,
Clerk, United States District Court, Western District of Kentucky.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

In the Matter of

William W. Radford, Sr.,

Bankrupt.

PETITION TO SUPERINTEND AND REVISE BY APPEAL ORDERS OF THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY—Filed Dec. 5, 1934.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Your petitioner, Louisville Joint Stock Land Bank, considering itself aggrieved by the order made and entered herein on November 14, 1934, and by the order made and entered herein on December 4, 1934, does hereby appeal as provided by the Bankruptcy Act from such orders, and each of them, and each of the provisions of each of them, to the United States Circuit Court of Appeals for the Sixth Circuit, for the reasons and in the particulars specified and set out in its Assignment of Errors filed herewith as a part hereof, and prays that its appeal and review may be allowed, that a transcript of the record, papers and proceedings under which such orders, and each of them, were made and on which the appeal was taken be duly authenticated and sent to the United States Circuit Court of Appeals for the Sixth Circuit, and that said orders be reversed in the particulars specified in said assignment of errors.

Dated this December 5, 1934.

Louisville Joint Stock Land Bank,
By John E. Tarrant,
Counsel.

William W. Radford, Sr., by counsel, hereby waives issuance and service of citation on any appeal granted pursuant to the foregoing petition for appeal and en-

ters his appearance in the United States Circuit Court of Appeals for the Sixth Circuit on such appeal.

D. A. Sachs, Jr.,
Edwin A. Krauthoff,
Frank Rives,
Counsel for William W. Radford, Sr.

ASSIGNMENT OF ERRORS—Filed Dec. 5, 1934.

Louisville Joint Stock Land Bank (hereinafter called the Bank) files this its assignment of errors herein and says that the Court erred in the following particulars, to-wit:

(1) The Court erred in overruling the objections of the Bank to the maintenance of this proceeding.

(2) The Court erred in adjudging William W. Radford, Sr., a bankrupt.

(3) The Court erred in referring this proceeding to Nat C. Cureton, the Referee in Bankruptcy, to take such proceedings as were authorized by the National Bankruptcy Act as amended by the Act of June 28, 1934.

(4) The Court erred in holding constitutional Section 75 of the National Bankruptcy Act.

(4-a) The Court erred in holding constitutional the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act, which amendment is the so-called Frazier-Lemke Act.

(4-b) The Court erred in holding the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act to be a law on the subject of bankruptcies.

(4-c) The Court erred in holding that the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act did not violate the Due Process Clause of the Fifth Amendment to the Federal Constitution.

(5) The Court erred in entering the order of November 14, 1934.

(6) The Court erred in entering the order of December 4, 1934.

(7) The Court erred in affirming the order entered by the Referee on November 30, 1934.

(7-a) The Court erred in affirming each of the orders entered by the Referee on December 1, 1934.

(8) The Court erred in affirming the order of the Referee entered on November 30, 1934, appointing appraisers and directing them to appraise all the property of the bankrupt at its then fair and reasonable value.

(9) The Court erred in affirming the order of the Referee entered on December 1, 1934, filing and approving the report of appraisers herein.

(10) The Court erred in affirmining the order of the Referee entered on December 1, 1934, fixing the fair and reasonable value of the mortgaged property, but not necessarily its market value, at $4,445.

(11) The Court erred in affirming the order of the Referee entered on December 1, 1934, ordering that possession, subject to the control of the Referee of the District Court of the United States for the Western District of Kentucky, of the mortgaged property should remain in William W. Radford, Sr., subject to a general lien as security for the payment of the value thereof to the Trustee of the creditors, such lien to be subject to and inferior to all prior liens or encumbrances.

(12) The Court erred in affirming the order of the Referee entered on December 1, 1934, staying all proceedings against William W. Radford, Sr., for the enforcement of any lien against the mortgaged property for a period of five years from December 1, 1934.

(13) The Court erred in affirming the order of the Referee entered on December 1, 1934, enjoining and restraining Louisville Joint Stock Land Bank from proceeding in this Court, or in any other Court, for a period of five years from December 1, 1934, to enforce any lien which it has or may have against the mortgaged property.

(14) The Court erred in affirming the order of the Referee entered on December 1, 1934, ordering that during a period of five years from December 1, 1934, William W. Radford, Sr., should retain possession of the mortgaged property under the control of the Court, provided that he pay $325 as a reasonable rental for the first year for such property of which he retained possession and a rental to be subsequently fixed by the Court for subsequent years.

(15) The Court erred in affirming the order of the Referee entered December 1, 1934, fixing as a reasonable rental to be paid by the bankrupt for the mortgaged property the sum of $325 for the first year.

(16) The Court erred in affirming the orders, and each of them, entered by the Referee on November 30, 1934, and December 1, 1934, holding Section 75 of the Bankruptcy Law as amended by the Act of June 28, 1934, constitutional.

(17) The Court erred in failing to reverse each of the orders of the Referee entered on November 30, 1934, and December 1, 1934, on the ground that the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act was not a law on the subject of bankruptcies and was in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

(18) The Court erred in allowing William W. Radford, Sr., to file an amended report of appraisers herein.

(19) The Court erred in refusing to allow Louisville Joint Stock Land Bank to pursue its remedies in the Christian Circuit Court and to immediately advertise and sell the mortgaged property in accordance with the judgment heretofore entered by the Christian Circuit Court in a foreclosure suit instituted in the Christian Circuit Court by Louisville Joint Stock Land Bank against William W. Radford, Sr., et al.

John E. Tarrant,
Counsel for Louisville Joint
Stock Land Bank.

ORDER GRANTING APPEAL—Filed Dec. 5, 1934.

On petition of Louisville Joint Stock Land Bank, it is ordered that an appeal be allowed in the petition, and pursuant to the authority of Section 24(b) of the Bankruptcy Act, that the appeal bond is fixed at the sum of Five Hundred Dollars ($500) to be filed with, and approved by, the Clerk of the United States District Court for the Western District of Kentucky.

Chas. H. Moorman,
Judge.

BOND—Filed Dec. 5, 1934.

Know All Men By These Presents that Louisville Joint Stock Land Bank as principal and Fidelity & Deposit Company of Maryland as surety are held and firmly bound unto William W. Radford, Sr., bankrupt, in the sum of Five Hundred Dollars ($500) to be paid to William W. Radford, Sr., bankrupt, to which payment well and truly to be made we bind ourselves, our successors and assigns by these presents.

The condition of this obligation is such that whereas the Louisville Joint Stock Land Bank has prosecuted an appeal to the United States Circuit Court of Appeals for the Sixth Circuit to revise and reverse orders entered on November 14, 1934, and December 1, 1934, in the above styled cause by the District Court of the United States for the Western District of Kentucky.

Now, therefore, if Louisville Joint Stock Land Bank should prosecute said appeal to effect and answer all damages and costs and fails to make good its appeal,

then this obligation shall be void, otherwise it shall be and remain in full force and effect.

Executed this December 5, 1934.

Louisville Joint Stock Land Bank,
By J. C. Engelhard.
Fidelity & Deposit Company of Maryland,
By J. Morton Morris,
Vice-President and Attorney-in-Fact.

Approved this December 6, 1934.
Lilburn Phelps,
Clerk United States District Court,
Western District of Kentucky.

Proceedings in the United States Circuit Court of Appeals for the Sixth Circuit.

STIPULATION—Filed Dec. 14, 1934.

It is stipulated that in the schedules attached to Radford's petition filed February 26, 1934, and omitted from the printed record by agreement, Radford made the following statements:

(1) Radford is indebted to various persons in the sum of One Thousand Four Hundred Fifty-eight Dollars ($1,458), which indebtednesses are secured by liens on certain of Radford's personal property;

(2) Radford is indebted to various persons in the sum of Two Thousand Twenty-three Dollars and Twenty-four Cents ($2,023.24), which debts are unsecured; and

(3) Fixed the value of the real estate mortgaged to the Louisville Joint Stock Land Bank at Four Thousand Five Hundred Dollars ($4,500);

(4) That at the hearing had before the Referee in Bankruptcy in this case in which the Referee determined the rental value of the mortgaged property and considered the report of the appraisers herein, the lienholder was offered an opportunity to introduce evidence as to the rental and the market value of the property mortgaged.

(Signed) John E. Tarrant,
Counsel for Appellant.

(Signed) David A. Sachs, Jr.,
Frank Rives,
Edwn A. Krauthoff,
Counsel for Appellee.

CAUSE ARGUED AND SUBMITTED—Dec. 14, 1934.
(Before: Moorman, Hicks and Simons, JJ.)

This cause is argued by J. E. Tarrant and Wm. Marshall Bullitt for Appellant and by Edwin A. Krauthoff, Harry H. Peterson and William A. Lemke for Appellee and is submitted to the Court.

DECREE—Entered Feb. 11, 1935.

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky, and was argued by counsel.

On consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.

OPINION—Filed Feb. 11, 1935.
No. 6959

UNITED STATES CIRCUIT COURT OF APPEALS
Sixth Circuit

LOUISVILLE JOINT STOCK LAND BANK, *Appellant*, v. WILLIAM W. RADFORD, SR., *Appellee*.	APPEAL from the District Court of the United States for the Western District of Kentucky.

Decided February 11, 1935.

BEFORE MOORMAN, HICKS and SIMONS, Circuit Judges.

SIMONS, Circuit Judge. This appeal, seasonably allowed by us and by the District Court, raises questions in respect to the constitutionality of §75 of the Bankruptcy Act, as amended by the Frazier-Lemke Act of June 28, 1934. The facts are not in dispute, and are sufficiently found in the opinion of the District Judge, 8 Fed. Supp. 489.

The bankrupt is a farmer. In 1922 he borrowed $8,000.00, and in 1924 an additional $1,000.00 from the appellant bank, giving as security mortgages on his 170 acre farm in Christian County, Kentucky, the mortgages containing covenants to pay taxes and to keep the buildings insured. Upon default in the payment of principal, interest and taxes, and through allowance of insurance to lapse, the bank, pursuant to the terms of the mortgages, declared the entire indebtedness thereon due and payable, and on June 5, 1933, filed a foreclosure suit in the Circuit Court of Christian County. Later the bank moved for the appointment of a receiver, but upon being informed by the Conciliation Commissioner of the county that Radford desired to avail himself of the benefits of §75 of the Bankruptcy Act, providing for agricultural compositions and extensions, the court declined to appoint the receiver, and stayed the foreclosure suit. On February 26, 1934, Radford filed in the United States District Court his petition and schedule under §75. On June 30, 1934, the Christian County Circuit Court entered judgment for the bank for the full amount of Rad-

ford's indebtedness, sustained the mortgages as a first lien upon his farm, and ordered the property sold by the Master Commissioner. Before the sale could be had Radford, on August 6, 1934, filed in the District Court an amended petition under the Frazier-Lemke Act, asking to be adjudged a bankrupt, that proceedings against him be stayed for a period of five years, that he be allowed to retain possession of the property during that period, and that he be given an option to purchase the mortgaged property at its appraised value at its termination. The bank intervened and answered, alleging §75 as amended to be unconstitutional, asking dismissal of the bankruptcy proceedings, and that it be allowed to pursue its remedies in accordance with the judgment of the Circuit Court. Radford admitted the allegations of fact in the answer, and the case was submitted upon the pleadings. The court held §75 and the Frazier-Lemke amendment constitutional, adjudged Radford a bankrupt, and referred the cause to the Referee for further proceedings.

Radford then petitioned to have his property appraised, his exemptions set aside, and that he be allowed to retain possession of the property and pay for it under the terms of sub-section (s), of §75, of the Bankruptcy Act. The Referee appointed appraisers, who appraised all of Radford's property, and fixed the fair and reasonable value of the mortgaged property at $4,445.00. The bank in open court offered to pay $9,205.09 in cash for the mortgaged property, but the Referee refused to consider the offer, approved the report of the appraisers, fixed the fair and reasonable value at $4,445.00, and ordered that possession thereof should remain in Radford, subject to a general lien in the trustee as security for the payment of the value of the property. Radford thereupon requested the Trustee to sell him the mortgaged property under the terms and conditions of paragraph (3), of sub-section (s), of §75. The bank refused consent, and filed its written objections thereto. Radford then petitioned the court to stay all proceedings against him for five years, and to allow him to retain possession upon a reasonable annual rental to be fixed by the court. The petition was granted, proceedings were stayed, the bank enjoined from enforcing its mortgage lien for five years, and Radford allowed to retain possession on payment of $325.00 on May 1, 1935, as rental for the first year, with rental for subsequent years to be fixed by the court. Upon a petition to the District Court for review,

the referee's orders were sustained and the bank took its appeal.

Section 75 of the Bankruptcy Act, as originally enacted, was part of the act of March 3, 1933, entitled "Provisions for the Relief of Debtors." It provided that any former claiming to be insolvent or unable to meet his debts might file a petition for composition or an extension. This automatically gave the bankruptcy court the same power and jurisdiction over the farmer and his property as if a voluntary petition for adjudication had been filed, and a decree of adjudication entered. Thereupon all proceedings against the farmer and his farm property, including his home and household effects, were stayed, except for the collection of taxes. The proposed composition or extension could be confirmed by the court only upon written acceptance by a majority of creditors in number and amount, but such composition or extension might not reduce the amount of or impair the lien of a secured creditor, but affect only the time and method of its liquidation.

The Frazier-Lemke Act of June 28, 1934, is an amendment to §75 of the Act of March 3, 1933. Its text is fully set forth in the opinion of the District Judge, and it is therefore not necessary to burden this opinion with it. It is sufficient for our purpose to say that it provides that a farmer failing to obtain the necessary consent to the terms of a composition or extension may by amended petition ask to be adjudged a bankrupt and secure the appointment of appraisers, who shall appraise all of his property at its then fair and reasonable value, not necessarily its market value, and after such appraisal, and after his exemptions under the state law have been set aside to him, then upon an agreement with the lien holders the trustee in bankruptcy must sell back to him all or any part of his property upon the terms specified in the act, but that if any secured creditor refuses to consent to such sale, the court shall stay all proceedings for a period of five years, during which time the farmer may retain possession of all or any part of his property provided he pays a reasonable annual rental therefor. At any time within five years the farmer may obtain full possession and title to his property by paying into court either its original appraised value, or in the case of mortgaged real estate, a reappraised price at the option of the lien holder, and may apply for his discharge in bankruptcy. The provisions of the act apply, however, only to debts existing on June 28, 1934.

Opinion

The legislation in respect to its validity under the Federal Constitution is attacked on two main grounds. It is asserted (1) that §75 as amended is not a law on the subject of bankruptcies and does not deal with any subject over which power is delegated to Congress, and so is in contravention of the Tenth Amendment to the Constitution of the United States; and (2) that it deprives creditors of their property without due process of law, and is therefore in contravention of the Fifth Amendment to the Constitution.

The power to legislate with respect to bankruptcies is conferred upon the Congress by the fourth clause of §8, of Article I, of the Constitution, whereby there is vested in it the power ". . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States." This power is conferred by express grant, and is, so far as the granting clause is concerned, without qualification or limitation. "The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount." *International Shoe Co.* v. *Pinkus*, 278 U. S. 261, 265.

On the first ground it is said that a law is not one on the subject of bankruptcies which does not provide for the speedy distribution of an insolvent debtor's assets among his creditors. The contention is that the attacked legislation fails to meet this test in providing that the debtor may at his option retain his property, that his debts may be reduced to the fair and reasonable value of his property, not necessarily the market value, and that he shall have a five year moratorium on the payment of this reduced amount.

Whatever may have been the primary purpose of bankruptcy laws, their historical development and the concept of an earlier day, illustrated by the provisions of English bankruptcy statutes and colonial insolvency laws, it is now established that the subject of bankruptcies includes not only the ratable distribution of the debtor's property, but the discharge of the bankrupt from his obligations. No commentary upon the connotation of the constitutional phrase has been so often quoted as that of Mr. Justice Catron in the case of *In re Klein*, reported in the note to *Nelson* v. *Carland*, 1 How. 265, 277:

> "I hold, it extends to all cases where the law causes to be distributed, the property of the debtor among his creditors; this is its least limit. Its

> greatest, is discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress. With the policy of a law, letting in all classes, others as well as traders; and permitting the bankrupt to come in voluntarily, and be discharged without the consent of his creditors, the courts have no concern; it belongs to the law makers."

To this comment the Supreme Court gave approval in *Hanover National Bank* v. *Moyses*, 186 U. S. 181, at 186.[1] Whether the limits drawn by Mr. Justice Catron mark the ultimate of the modern concept of bankruptcy it is not necessary to decide, for they are sufficient for present purposes. It has been said that distribution of property is the principal object to be attained, and that the discharge of the debtor is merely incidental, *U. S.* v. *Fox*, 95 U. S. 670, but this but illustrates the historical development of bankruptcy legislation. Judge Taft, speaking for this court in *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. 637, 647, enumerates the purposes of bankruptcy acts in the order of their chronological development rather than in the order of their present importance when he declares that the third purpose of a bankruptcy act is "To relieve debtors from the burden of debts which, through business misfortunes and otherwise they have incurred, and which they are unable to pay."

One of the tests applied to State insolvency laws to determine whether they invade the field conveyed to and occupied by the Congress, is to ascertain whether they contain provisions for the discharge of the insolvent debtor from all or part of his debts. If they do the statute is one of bankruptcy. *Pobreslo* v. *Boyd Co.*, 287 U. S. 518; *Johnston* v. *Start*, 287 U. S. 527; *International Shoe Co.* v. *Pinkus*, supra. While this may not be the sole test, it is undoubtedly an important one. See "What is a Bankruptcy Act," by Prof. Max Radin, Vol. 20, American Bar Association Journal, 792.

It is an undoubtedly desirable concomitant of bankruptcy legislation that distribution of the debtor's assets be made as speedily as is consistent with the attainment of the principal objectives of such laws, but that prompt distribution is a necessary prerequisite to the exercise of the granted power we doubt, and no cited

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[1]See Vol. 21, American Bar Ass'n Journal, 49, 50.

case, so holds. Observations on the manifest purpose of specific statutes are not to be interpreted as limitations upon a constitutional power, nor is its exercise to be based upon a standard so elastic as to shift with varying judgments based upon differences of time and circumstance. Even so it is doubtful whether the courts will oppose their judgment as to what constitutes speedy distribution to that of the Congress, except as the legislative standard may be so grossly arbitrary and unreasonable as to offend against the due process clause of the Fifth Amendment, to be hereinafter discussed.

The challenged statute provides for ratable distribution of the bankrupt's assets among his creditors. It provides for his discharge. That it also in response to a manifest public purpose opens the door of opportunity to his ultimate rehabilitation is not of itself destructive of the character of the legislation as within the constitutional grant of power. The limitation of its assailed provisions to a single class does not invalidate it if the classification be reasonable, for the uniformity required by the Constitution is geographical and not personal. *Hanover National Bank* v. *Moyses*, supra.

Compositions have generally been regarded as in some respects outside of bankruptcy proceedings, but nevertheless as reasonably auxiliary thereto. Provisions in bankruptcy statutes for compositions have never been held to invalidate them, though the creditor by reason thereof receives but his pro-rata share of the fair value of the bankrupt's assets, while the debtor retains possession and title to his property. Of course with respect to consenting creditors it is a matter of agreement, *In re Lane*, 125 Fed. 772, 773; *Cumberland Glass Co.* v. *De-Witt*, 237 U. S. 447, 452, but it is coercion as to non-assenting creditors, however it may be rationalized by considering creditors as a class with the will of the majority enforced upon the minority. Nor has the provision in bankruptcy acts permitting trustees to sell mortgaged property free and clear of lien been considered destructive of their validity as acts upon the subject of bankruptcy. "To transfer the lien from the property to the proceeds of its sale is the exercise of a lesser power [than sale], and legislation conferring it is obviously constitutional." *Van Huffel* v. *Harkelrode*, 284 U. S. 225, 228.

It must be remembered that constitutional power is not necessarily confined within those limits within which the Congress has hitherto seen fit to exercise it. The novelty of a provision is no demonstration of its in-

validity. The grant to Congress of the power to establish bankruptcy laws involves the power to impair the obligation of contracts—this the States are by the Fourteenth Amendment forbidden to do. *Hanover National Bank* v. *Moyses,* supra. No case has been cited which limits this power to contracts which are unsecured, and none has been found. On the contrary, it has frequently been held that private contracts may not impose a restriction upon the exercise of a constitutional power. *Louisville & Nashville R. R. Co.* v. *Mottley,* 219 U. S. 467, 485; *Monongahela Bridge Co.* v. *U. S.,* 216 U. S. 177, 193; *Addyston Pipe & Steel Co.* v. *U. S.,* 175 U. S. 211, 229, and preferences valid under state law have been destroyed by the exercise of federal power under the bankruptcy clause. The subject of bankruptcies comprehends every phase of the relations between an insolvent or non-paying or fraudulent debtor and his creditors, extending to his or their relief. *In re Reiman,* Fed. cases No. 11,673 (D. C. N. Y.) 496, affd. Fed. cases No. 11,675 (C. C. N. Y.).

We come then to the contention that the assailed statute offends against the due process clause of the Fifth Amendment. Conceding that the due process clause limits the power or the manner of its exercise under the bankruptcy clause, it nevertheless does not vitiate it. The Constitution is not self-destructive—"the power which it confers on the one hand it does not immediately take away on the other." *Billings* v. *U. S.,* 232 U. S. 261, 282; *McCray* v. *U. S.,* 195 U. S. 27. Perhaps all that is or can be said from the point of view of the appellant is expressed in *Hanover National Bank* v. *Moyses,* supra, "Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law," and this is the test that we apply to the contentions upon which the validity of the statute is attacked.

While the congress does not by reason of a national emergency draw unto itself under the bankruptcy clause powers not previously possessed, since "emergency does not create power," yet the existence of an emergency is not to be ignored when validity is to be determined by the reasonableness of the extent to which and the means by which constitutional power is exercised, assuming limitations upon such power exerted by the due process clause. That the assailed legislation was conceived in emergency and addressed to the legitimate end of relieving wide-spread national distress is implicit in the provisions limiting the operation of §7 to debts existing

June 28, 1934, providing that it shall expire in 1938, and by the declaration of policy in substantially contemporaneous amendments to the Bankruptcy Act. That the Frazier-Lemke Act does not itself contain an express declaration of a policy based upon the existence of an emergency is unimportant. A declaration by the legislature as to the existence of an emergency, while entitled to great weight, is not conclusive. *Block* v. *Hirch*, 256 U. S. 135. It must follow that the absence of such formal declaration, if the purpose and policy of the act be otherwise disclosed, is equally inconclusive, and the courts are not required to close their eyes to that which everybody knows exists.

In considering whether the regulations concerning discharge are so grossly unreasonable as to be incompatible with fundamental law, we apply therefore a criterion which itself is not one of unyielding rigidity or narrow conception. "There has been a growing appreciation," said the Supreme Court in *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398, 442, "of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare." As a leading text-writer has put it, "The concept of the balance of convenience between private rights and public welfare runs throughout the entire scope of due process," Mott, *Due Process of Law* (1926), 597.[3] It follows, if these observations are sound, that the exercise of constitutional power in the public interest is not to be limited by considerations of form rather than of substance, and that the fair intent of the constitutional limitation in the Fifth Amendment no more precludes the Congress from meeting the public need because of a pressing public disaster than does that in the Fourteenth Amendment constrain the states in similar situations so long as the relief afforded has reasonable relation to the legitimate end to which the legislation is directed. *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426, 433. The public welfare sought to be conserved by the assailed legislation not only transcends the interest of the class to be affected, but is rooted in the traditional policy of the United States to prevent the development of a great class of dependent tenant farmers comparable to the peasantry of European states. This policy was early reflected in the disposition of the public domain, the

[3]See also Corwin, No Doctrine of Due Process of Law Before the Civil War, 24 Har. L. Rev. 366, 460; Hough, Due Process of Law Today, 32 Har. L. Rev. 218.

homestead laws, and the limitations written into the railroad land grants restricting sales in quantity and price and to actual settlers. *Oregon & California R. R. v. U. S.*, 238 U. S. 393. This is not to say that substantial private rights must yield to public policy in the face of constitutional limitation, but is indicated as an aid to determining whether constitutional power has been arbitrarily or unreasonably exercised or the balance between individual interests and the public welfare destroyed.

We pass without consideration the arguments advanced to show that the law is unreasonable or arbitrary with respect to the rights of sureties or unsecured creditors. The appellant is not a surety, nor does the record disclose that its debt is secured otherwise than by mortgage. Neither is it an unsecured creditor. Having offered to pay to the trustee for the mortgaged property an amount equivalent to the total of the mortgage debt and to step out of the bankruptcy proceedings with its mortgages fully discharged, it may become an unsecured creditor if at all only by the failure of its assault upon the statute, and then to the extent of the deficiency that may result after purchase by the bankrupt at appraised value. It is settled that the constitutionality of a statute may be considered only when the justification for some direct injury suffered or threatened presenting a justiciable issue is made to rest upon the enforcement of the act. See *City of Allegan* v. *Consumers' Power Co.*, 71 Fed. (2d) 477, 481 (C. C. A. 6), and authorities there cited. The record presents no issue as between the bankrupt and unsecured cerditors.

Complaint is made, however, that the statute prevents the appellant from enforcing its mortgages for an arbitrary period of five years, and this without relation to the continuance of an emergency; that the rental terms are unreasonable; that no provision is made for taxes and insurance, or for the prevention of waste; that the interest on the mortgage debt is wiped out; that fixing the value of the debtor's property at its fair value, not necessarily its market value, is arbitrary, unreasonable and capricious; that all risk of decline in value is borne by the mortgagee; and, generally, that part of its debt is confiscated for the benefit of the mortgagor.

As to the first it may be sufficient to say that any forecast as to the extent and duration of the emergency must necessarily be uncertain, and we are unable to say until "experience is available to correct uncertain

prophesy" that the judgment of the Congress after hearing and deliberation is wrong. But the appellant gives no challenge to the present existence of the emergency, and manifestly can give none. We are not obliged to speculate as to validity of the statute at another time and under other circumstances. "A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed," *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 547, 548, and "It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends." *Home Bldg. & Loan Ass'n* v. *Blaisdell*, supra.

The principal inquiry, however, that suggests itself in relation to the appellant's grievance, and this in respect to all of the specifications of its complaint, must concern itself with consideration of what it is in fact deprived through the operation of the challenged law. It is true that the appellant will not be able to collect the face value of its mortgages, nor the accrued interest thereon. But this is a loss it has already sustained, not through the operation of the statute, but through the default, insolvency and bankruptcy of its debtor. But for the bankruptcy, it would still have its right to foreclosure, and to bid in the property. It is by the measure of that right that the reasonableness of §75 must be judged. The appraisers have declared and the court has found that the fair value of the mortgaged property is $4,445.00. The fairness of the appraisal is not attacked. That the appellant offered to buy the property from the trustee for an amount equal to the mortgage debt is of course beside the point. Such offer can have no possible bearing upon the fair value of the property. It is this value that forms the base for the price the bankrupt is to pay upon the exercise of his option. True, the mortgagee, upon bidding in the property under foreclosure, has the expectation that by holding the property for a time values may be restored, and it may recoup part or all of its loss. The statute does not take from him this opportunity. It provides for a reappraisal at the end of five years—the option period—upon the mortgagee's request—and the debtor must pay the reappraised price or the original appraised value at the mortgagee's option. If in composition proceedings nonassenting creditors may be compelled, without valid constitutional objection, to accept in discharge of their claims their pro-rata share of the fair

value of the bankrupt's assets—if under the doctrine of *Van Huffel* v. *Harkelrode*, supra, it is "obviously constitutional" to transfer the creditor's lien from the bankrupt's property to the proceeds of its sale—we can see no constitutional bar to the substitution for the value of the appellant's right to foreclose the fair value of the mortgaged property.

But the appellant complains that the provisions for appointment of appraisers is arbitrary and unreasonable, and that the appraisal of the security at its "fair value, not necessarily its market value" somehow offends against due process. It has never been thought that, in the taking of private property for public use under the power of eminent domain, an award made by a jury or Commissioners[3] under the supervision of a court, violates the due process clause or results in taking private property without just compensation. The appraisals are by sub-section (I) of §(s) subject to the right of exceptions, objections and appeal, in accordance with the Act. This obviously means the Bankruptcy Act of which the Frazier-Lemke Act has become a component part. If there is any doubt about this, construction must under familiar principles of statutory interpretation be arrived at to the end that validity rather than invalidity results. An appraisal at "fair value, not necessarily market value," must necessarily mean that market value is the minimum value to be found beyond which other circumstances may be considered to arrive at "fair value." It is inconceivable that an appraisal aiming at fair value will ever be lower than market value, or if so would stand the test of judicial review.

When the appellant complains of its loss of interest during the option period, or the insufficiency of the rental to pay taxes, insurance and repairs, it still speaks in the terms of the mortgage covenants rather than with an evaluation of its remedies for broken contracts, and is tilting at economic distress rather than at the reasonableness of the challenged statute. The foreclosure that is stayed would have brought it no interest, and reasonable rental value has always been the compensatory equivalent for deprivation of the use of property in the eyes of the law. Nor is there substance in the grievance that the property will be seized for taxes and deteriorate through waste. Rentals are to be paid

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[3]Due proces does not require a jury trial if one would be inappropriate. *Ex Parte Wall*, 107 U. S. 265, 289; *Maxwell* v. *Dow*, 176 U. S. 581.

to the bankruptcy trustee, who is still under the supervision of the referee and the court. There is no warrant for the assumption that the trustee may or will be permitted to be less diligent with respect to his duties than with bankrupt estates generally. Moreover, the property is by sub-section (b) placed under the supervision of the Conciliation Commissioner, and the rights of the appellant to invoke the protection of the bankruptcy court as a court of equity are not less under the assailed statute than are those of mortgagees or lessors generally.

Finally the grounds of complaint are in many respects similar to those upon which the constitutionality of §77 of the Bankruptcy Act (providing for corporate reorganizations) has been assailed. While we express no opinion upon the validity of that section, whose constitutionality will presently be passed upon by the Supreme Court, it is important to note that so far as its provisions are similar to those here considered, they have not generally been considered incompatible with validity. *In re Chicago R. I. & P. Ry. Co.*, 72 Fed. (2d) 443 (C. C. A. 7). Compare *In re Landquist, et al.*, 70 Fed. (2d) 929 (C. C. A. 7).[4]

The decree below is affirmed.

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[4]See also XXI American Bar Journal 47; XII, No. 2, New York University Law Quarterly Review (Dec. 2, 1934), 196; Yale Law Journal (Dec., 1931), 197; 32 Mich. Law Journal, 221 (Dec., 1933). Also as to §75, XLVIII, Harvard Law Review, 332 (Dec., 1934), and XXIX Ill. Law Rev. 645 (Jan., 1935).

CLERK'S CERTIFICATE.

UNITED STATES CIRCUIT COURT OF APPEALS
For the Sixth Circuit.

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of Louisville Joint Stock Land Bank v. William W. Radford, Sr., No. 6959, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 11th day of February, A. D. 1935.

J. W. Menzies,
Clerk of the United States Circuit
Court of Appeals for the Sixth Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 4, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, and the case is assigned for argument on Monday, April 1st, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

2

FILE COPY

Office Supreme Court
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CHARLES ELMORE

No. 717

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

LOUISVILLE JOINT STOCK LAND BANK, - Petitioner,

WILLIAM W. RADFORD, SR.

PETITION FOR A WRIT OF CERTIORARI

TO THE

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

JOHN E. TARRANT,
Counsel for Petitioner.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

[References required by Rules 12 and 27]

Opinion below. *Louisville Joint Stock Land Bank* v. *Radford* (unreported), decided February 11, 1935.

Jurisdictional authority. Judicial Code, §240(a), as amended by Act of February 13, 1925.

Date of Judgment. February 11, 1935 (R. 100).

Nature of the case, rulings, etc. A Joint Stock Land Bank, as mortgagee, began foreclosure proceedings in a State Court against a farmer. After judgment of sale had been entered in the State Court, but before the property could be sold, the farmer filed in the Federal Court a petition under the "Agricultural Compositions and Extensions" provisions of §75(c) of the Bankruptcy Act as amended March 3, 1933, and as further amended by the Frazier-Lemke Act of June 28, 1934, praying that he be adjudged a bankrupt; that all proceedings against him be stayed for five years; that he be allowed to retain possession of the property during that time; and be given an option to purchase it at its appraised value (R. 12, *et seq.*).

The Joint Stock Land Bank attacked the constitutionality of Subsection s(7) of the Frazier-Lemke Act Amendment, upon the ground (*a*) that it was not a law "on the subject of Bankruptcies," and (*b*) that it deprived the Land Bank, as mortgagee, of its property without "due process of law" (R. 15-49).

The District Court sustained the constitutionality of the Act (R. 52-67), staying all proceedings against the bankrupt for five years, giving him the possession of the mortgaged property for five years at an annual rental of $325 (R. 85-86).

On appeal, the Circuit Court of Appeals for the Sixth Circuit affirmed the decree below, and held the Frazier-Lemke Act constitutional (R. 100-112).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

LOUISVILLE JOINT STOCK LAND BANK, - - *Petitioner,*

v.

WILLIAM W. RADFORD, SR.

PETITION FOR A WRIT OF CERTIORARI

TO THE

United States Circuit Court of Appeals for the Sixth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Louisville Joint Stock Land Bank petitions for a writ of *certiorari* to review a decision of the C. C. A. (6th Circuit), just rendered February 11, 1935, in *Louisville Joint Stock Land Bank* v. *Radford* (unreported), which sustained the constitutionality of the Frazier-Lemke Act of June 28, 1934, amending §75 of the Bankruptcy Act, regarding "Agricultural Compositions and Extensions."

SHORT STATEMENT OF THE MATTER INVOLVED.

The District Court and the C. C. A. held that Radford (a farmer possessed of both real and personal property) could, by filing a petition under the Frazier-Lemke Act, obtain (1) a five-year-stay of all proceedings against him for the foreclosure of a $9,000 mortgage on his 170-acre farm; (2) the right during that period to remain in possession of the farm, upon the payment of only $325 a year rental; and (3) the right at any time during the five years to purchase the mortgaged property at its appraised value.

The Joint Stock Land Bank, as mortgagee, offered to pay into the Bankruptcy Court, in cash, the full amount of the mortgage debt and interest, to-wit: $9,205.09. But the Court disregarded that offer, approved the value fixed by the appraisers of $4,445 (R. 72, 73); enjoined the Land Bank for five years from a proceeding in any court to enforce its lien; and gave possession of the property to the bankrupt at a rental of $325 a year. The bankrupt has the right during the five years to be discharged of his debts, and purchase the property at $4,445, or at a re-appraised value, if the mortgagee desires.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I. The constitutionality of the Frazier-Lemke Act is an important question of Federal law, which has not been, but which should be, settled by this Court.

There are over a million farm mortgages in this country, aggregating around *eight billions of dollars* of indebtedness.

The Act prevents a mortgagee from enforcing the lien of his mortgage. On application of the debtor, a *five-year moratorium must* be granted to him, leaving him in possession of the property upon the payment of a rental fixed by the Court, with an exclusive option to him to buy the property at an appraised value, and thereafter be discharged from his indebtedness.

Many such cases are now pending in all parts of the United States, involving the foreclosure of farm mortgages and the constitutionality of the Frazier-Lemke Act. The number is constantly increasing.

It is important that the constitutionality of the Act should be promptly settled by this Court, in order that there may be a uniform guide in the administration of farm foreclosures in this country.

The Frazier-Lemke Act is unconstitutional for two reasons:

(1) It does not provide for a speedy or ratable, or indeed any, distribution of the debtor's assets among his creditors; and, therefore, it is not a "law on the subject of Bankruptcies," and is an encroachment on the reserved rights of the States (*U. S.* v. *Fox*, 95 U. S. 670; *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 186; *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. 637, 647; *In re Swafford Bros. Dry Goods Co.*, 180 Fed. 549, 556; *In re California Pacific R. R. Co.*, Fed. Cases No. 2315).

The C. C. A.'s statement that the Act "provides for ratable distribution of the bankrupt's assets among his creditors" is not accurate. *It does not distribute the assets at all.* It provides that the bankrupt may, within five years, *pay an appraised value* and keep the mortgaged property. The Act provides for a distribution of the ap-

praised value, *but not for a distribution of the bankrupt's assets.*

(2) It destroys the mortgagee's property right in the specific thing mortgaged, and it amounts to a legislative taking of property from one person for the benefit of another. Its provisions are so unreasonable, arbitrary and confiscatory as to violate the "due process" clause of the Fifth Amendment, in that it, in effect, takes away the vested property rights of the mortgagee, and gives them to the mortgagor (*Gunn* v. *Barry*, 15 Wall. 610; *In re Dillard*, 2 Hughes, 190; *Mo. Pacific R. Co.* v. *Nebraska*, 164 U. S. 403, 417; *Ochoa* v. *Hernandez*, 230 U. S. 139, 161; *Lynch* v. *U. S.*, 292 U. S. 571, 580). It cannot be justified upon the ground of emergency, as the five-year *moratorium* is absolute, and is not limited to the existence or continuance of an emergency (*W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426).

II. This decision by the C. C. A. (6th) is the first decision by any C. C. A. on the constitutionality of the Frazier-Lemke Act; but two District Courts have held the Act to be unconstitutional, one of which cases is now pending undetermined in the Circuit Court of Appeals for the Fourth Circuit.

JOHN E. TARRANT,
Counsel for Petitioner.

Feby. 12, 1935.

The respondent hereby acknowledges due proof of service of notice of the filing of the foregoing Petition for *Certiorari*, together with a copy of the Petition and printed Record; and the respondent hereby waives the time limit within which to file an opposing brief thereto.

D. A. Sachs, Jr.,
Edwin A. Krauthoff,
Counsel for Respondent.

February 13, 1935.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 717.

LOUISVILLE JOINT STOCK LAND BANK,
Petitioner,

against

WILLIAM W. RADFORD, SR.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF PETITIONER LOUISVILLE JOINT STOCK LAND BANK.

JOHN W. DAVIS,
WM. MARSHALL BULLITT,
JOHN E. TARRANT,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

LOUISVILLE JOINT STOCK LAND BANK,
Petitioner,

against

WILLIAM W. RADFORD, SR.,
Respondent.

No. 717.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF ON BEHALF OF LOUISVILLE JOINT STOCK LAND BANK.

Opinions Below.

Louisville Joint Stock Land Bank v. *Radford*, 8 F. Supp. 489 (D. C.) [R. 52-67]; 74 Fed. (2) 576 (C. C. A. 6th) [R. 101-112].

Jurisdiction.

Certiorari was granted on March 4, 1935 under Judicial Code § 240(a), as amended by the Act of February 13, 1925.

Questions Presented.

The only question presented is the constitutionality of subsection (s), known as the Frazier-Lemke Act of June 28, 1934 [48 Stat. 1289], which was added as an amendment to Section 75 of the Bankruptcy Act [47 Stat. 1470].

This includes three considerations:

1. Whether subsection (*s*) (7) is within the power of Congress to establish uniform laws "on the subject of bankruptcies."

2. Whether a mortgagee is entitled to have the mortgaged property applied to the payment of his claim, or, whether Congress can authorize the mortgagor to keep the property, and compel the mortgagee to surrender his lien and to accept in lieu thereof an appraised value which need not be the "market value" of the property.

3. Whether subsection (s) (7) is so arbitrary, capricious and unreasonable that it is incompatible with fundamental law and violates the "due process" clause of the Fifth Amendment.

Statutes Involved.

The statutes involved are set forth in Appendix A* (p. 54 *infra*).

On March 3, 1933, the Bankruptcy Act (§ 75) entitled "AGRICULTURAL COMPOSITIONS AND EXTENSIONS" provided that at any time before March 3, 1938, any *bona fide* farmer or other individual "the principal part of whose income is derived from farming operations" (i. e. *absentee landlord*), may file a petition stating that he is "unable to meet his debts as they mature" and desires "to effect a composition or an extension of time to pay his debts"—with appropriate

* The Frazier-Lemke Act is not only full of perplexing ambiguities, but it omits much that is essential to a self-speaking statute. The Courts which have considered it have been forced to resort freely to judicial interpolation (*Cf. In re Miner*, 9 F. Supp. 1).

President Roosevelt's prepared statement to the press at the time of signing the Frazier-Lemke bill contained the following observation:

> "The bill is in some respects loosely worded and will require amendment at the next session of Congress. Nevertheless, the reasons for signing it far outweigh the arguments on the other side."—N. Y. Times, June 30, 1934.

provisions for proposing and carrying into effect a composition or extension.

On June 28, 1934, § 75 was amended by the addition of the Frazier-Lemke Act [§ 75 (s)] which provided that any farmer (or absentee landlord) (1) who could not get his creditors to agree to the composition or extension, or (2) even if they had agreed thereto, who had changed his mind and desired to repudiate the composition or extension previously made, might avail himself of the privileges granted by the Frazier-Lemke Act.

In such a case the farmer may ask to be adjudged a bankrupt, and have his property appraised,

> "at its then fair and reasonable value, not necessarily the market value at the time of such appraisal" [Section 75 (s) (1)].

If the mortgagee will *not* voluntarily consent to sell the mortgaged property back to the farmer at the appraised value upon six years' credit on the easy terms fixed by the Act, then *automatically*

(*a*) The Bankruptcy Court shall *stay all proceedings for five years*; during this entire period the farmer *shall retain possession* of any part of the property which he desires; *provided*, he annually pays into court a reasonable rental therefor.

(*b*) At any time within the five years, the farmer (at his option) may obtain full possession and title to the property by paying into court either (1) its original appraised price, or (2) in the case of mortgaged real estate, at the option of the lienholder, a reappraised price of the mortgaged land.

(*c*) If the farmer pays the price he may apply for his discharge in bankruptcy; but if he fails to pay, the Court may order the mortgaged property sold.

The Frazier-Lemke Act only applies to debts existing on June 28, 1934 [subsection (s) (7)].

We are especially concerned with subsection (s) (7) of the Frazier-Lemke Act (48 Stat. 1291) which reads as follows:

> "(7) If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as herein provided for, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided,* That upon request of any lienholder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lienholder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act; *Provided, however,* That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.
>
> If the debtor fails to comply with the provisions of this subsection, the court may order the trustee to sell the property as provided in this Act."

Statement of the Case.

In 1922-24, Radford borrowed $9,000 from the Louisville Joint Stock Land Bank, mortgaging his 170-acre Kentucky farm (appraised on the statutory* basis at $18,000), its rents, issues and profits, to secure the payment thereof, and agree-

* 39 Stat. 370.

ing to pay all taxes and keep up $1,000 fire insurance (R. 16, 18-33).

Radford defaulted in various payments due from September 1, 1932, through March 1, 1934; failed to pay the 1931-1933 taxes; and refused to keep up the insurance (R. 24, 33, 34).

Being a Joint Stock Land Bank organized under the Federal Farm Loan Act of 1916 [39 Stat. 360] petitioner Bank attempted to give every consideration to effecting the announced policies of the Roosevelt administration consistent with the needs and security of the other interested farmers. The Bank repeatedly, but without avail, urged Radford to refinance his indebtedness pursuant to the provisions of the Emergency Farm Mortgage Act of 1933* [48 Stat. 41] (R. 41-3).

On June 5, 1933, the Land Bank finally accelerated the notes and mortgages; and on June 23, 1933, instituted a foreclosure suit in a Kentucky State Court (R. 34).

In September-October, 1933, the State Court denied the Bank's motions for the appointment of a receiver and for judgment in the foreclosure suit, in order to allow Radford time to seek a composition and extension of his debts under Section 75 (R. 42).

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* This Act empowered Federal Land Banks and the Land Bank Commissioner to lend farmers seventy-five per cent of the *normal*, not the market, value of their land with *no repayment of principal for five years* and at 4½% interest for the first five years and 5% thereafter.

Normal value was defined by Mr. Rice, President of the Federal Land Bank of Louisville, speaking for the Farm Credit Administration on October 10, 1933, before the American Life Convention, as follows (Report of 1933 American Life Convention):

> *"Normalcy is that value placed upon land based upon the price of commodities for the period of 1909 to 1914.* We loan upon the earning power of land, and in arriving at normalcy we use the price of wheat for 1909 to 1914 of ninety cents in this section, sixty-five cents for corn, about seven cents for hogs and other products and commodities in their proportion. * * *
>
> *"When we loan 75% therefore of normalcy,* in combining the two loans you can readily see that *we have loaned from 97% to 105% of the present value of the land.* * * *"*

Cf. § 2 of the Agricultural Adjustment Act [48 Stat. 32].

On February 26, 1934 (after repeated refusals to cooperate with the Bank in refinancing his mortgage), Radford filed his petition under Section 75(c) (R. 8-9, 43).

In April, 1934, the *Bank offered to accept from Radford a deed to the mortgaged property in full satisfaction of the $9,000 indebtedness due the Bank,* and to assume all unpaid taxes. Radford agreed to execute such a deed but refused to do so when the Bank presented the prepared deed to him to be signed (R. 43).

On June 30, 1934, the State Court entered a judgment of foreclosure, ordered the sale of the property, and the Bank thereupon took steps to have the property advertised for sale (R. 43-7).

On August 6, 1934, and again on November 10, 1934 (before the property could be sold under the State Court decree), Radford amended his original petition under Section 75 and invoked the provisions of the Frazier-Lemke Act (R. 11, 102).

The Bank intervened, praying that the Frazier-Lemke Act be declared unconstitutional, and that the Bank be allowed to pursue its remedies in accordance with the judgment of the State Court (R. 15-49).

On November 14, 1934, the District Court held that the Frazier-Lemke Act was constitutional, adjudged Radford a bankrupt, and referred the cause to a referee to take the further proceedings authorized thereby (R. 51).

Upon Radford's request, the referee appointed appraisers and directed them to appraise all of Radford's property pledged, encumbered or unencumbered, "at its then fair and reasonable value, not necessarily the market value". The appraisers fixed the value of the mortgaged property at $4,445 (R. 67, 69-70).*

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* In his schedule, Radford fixed it at $4,450. In his Brief in the District Court (p. 2) it is said: "So that land worth $18,000 in 1924 has become reduced ten years later to a value of $6,700 * * *".

The Bank in open court *offered to pay $9,205.09 in cash for the property mortgaged to it* (R. 71). But the referee approved the appraisal, fixed the value of the mortgaged property at $4,445 (R. 72) and ordered that Radford should remain in possession of the mortgaged property (R. 74-5).

The Bank refused to consent to a sale of the mortgaged property to Radford at the $4,445 appraised value, upon the easy six-year credit terms of subsection (s) (3) (R. 76, 78).

Thereupon, the referee, in accordance with the mandate of subsection (s) (7), ordered that (R. 80):

> (1) All proceedings against Radford for the enforcement of *any* lien against the mortgaged property *be stayed for five years;*
>
> (2) The Bank be enjoined for five years from proceeding in any court to enforce its lien; and
>
> (3) Radford should retain possession of the mortgaged property for five years, provided he paid $325 on May 1, 1935 (i. e. in six months) as rental for the first year and paid a rental to be fixed by the Court for subsequent years. Of this sum, $105 must be expended on taxes and insurance on the mortgaged property (R. 80). [Parenthetically it should be noted that from the remaining $220 nominally "to be distributed among the secured and unsecured creditors, as their interests may appear," administration expenses are to be deducted, leaving little, if anything, to the Bank in the form of a cash rental payment.]

Decisions Below.

The District Court approved the action of the referee in entering each of the orders, and upheld the Act (R. 51-67; 85-86).

The Bank then appealed to the Circuit Court of Appeals for the Sixth Circuit (R. 82-4, 86, 88-90, 93-98).

The Circuit Court of Appeals affirmed the decree below (R. 100); and held that the bankruptcy power comprehended "every phase of the relations between an insolvent or *non-paying* or fraudulent debtor and his creditors, extending to his or their relief" (R. 107); and that Congress could compel a secured creditor to accept an *appraised value* of the mortgaged property while permitting the debtor to keep such property, free and clear of the lien (R. 101-112).

Specifications of Error.

The ultimate error is that the Circuit Court of Appeals erred in holding the Frazier-Lemke Act constitutional (R. 94-96).

Summary of Argument.

1. The Frazier-Lemke Act is not a law "on the subject of bankruptcies"; does not deal with any subject over which power is delegated to Congress; and is, therefore, in contravention of the Tenth Amendment (p. 9, infra).

2. The Frazier-Lemke Act deprived the Land Bank of its property without due process of law by denying the Land Bank its fundamental right to have the mortgaged property applied to the payment of its debt (p. 24, infra).

3. The Frazier-Lemke Act contains provisions so unreasonable, capricious and arbitrary that the Land Bank is deprived of its property without due process of law (p. 34, infra).

4. The Frazier-Lemke Act cannot be sustained on any doctrine related to an emergency (p. 51, infra).

POINT I.

The Frazier-Lemke Act is not a law "on the subject of bankruptcies"; does not deal with any subject over which power is delegated to Congress; and is, therefore, in contravention of the Tenth Amendment.

The Acts of March 3, 1933 (Section 75 as originally enacted), and of June 28, 1934 (the Frazier-Lemke Act), purport to be amendments to the Bankruptcy Act. There is no other possible constitutional basis for them. Unless they are *bankrupt laws in fact* and *not merely by label* they are unconstitutional. This proposition, we believe to be self-evident and incontrovertible.

Until the Frazier-Lemke Act, the essential features of bankruptcy law were: *First,* on the part of the debtor—a surrender of his property and its ratable *distribution* among his creditors; and, *second,* on the part of the creditors—discharge of all claims against the debtor after distribution.

In recent months there has been abroad in the land the erroneous doctrine* that the "subject of bankruptcies" in

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* See *In re Burgh, In re Parmenter,* 7 F. Supp. 184; *In re Landquist, In re Parmenter,* 70 F. (2d) 929, cert. den., 55 Sup. Ct. 98, sub. nom. *Hardenbrook* v. *Landquist; In re Chicago, R. I. & P. Railway Co.,* 72 F. (2d) 443, cert. granted sub nom. *Continental Bank & Trust Co.* v. *Chicago, R. I. & P. Ry. Co.,* 55 Sup. Ct. 213; *In re Jacobs,* 7 F. Supp. 749; *Campbell* v. *Alleghany Corp.* (C. C. A. 4th), March 2, 1935. See also Comment (1935), 44 Yale L. J., 651, 655; Hanna, *Agriculture and the Bankruptcy Act* (1934), 19 Minn. L. Rev. 1, 28-9; Hanna, *Frazier-Lemke Amendments to Section 75 of the Bankruptcy Act* (1934), XX A. B. A. J. 687, 689.

In fact every case which has expressly held the Frazier-Lemke Amendment to be on the subject of bankruptcies has been grounded on the extreme breadth of this definition of a bankruptcy law. *See In re Bradford,* 7 F. Supp. 665; *In re Moore,* 8 F. Supp. 393; *Paine* v. *Capitol Freehold Land & Trust Co.,* 8 F. Supp. 500; *In re Cope, In re Chilton,* 8 F. Supp. 778; *cf. In re Miner,* 9 F. Supp. 1, where the question was apparently not considered.

fact embraces *every phase* of the relations between an insolvent or *non-paying* debtor and his creditors.

Both lower Courts here subscribed to that view. The District Court said:

> "Undoubtedly, the Constitution vests in Congress the power to pass laws which are territorially uniform, dealing with the relation of creditor and debtor, when the debtor is unable *or unwilling* to discharge his indebtedness in full"* (R. 54).

The Circuit Court of Appeals stated the tenet as follows:

> "The subject of bankruptcies comprehends *every phase of the relations* between an insolvent *or non-paying* or fraudulent *debtor and his creditors,* extending to his or their relief" (R. 107).

That approach to the constitutionality of the Frazier-Lemke Act compelled the conclusion reached. If it be that concentrated in the Federal Government is the power to control every situation involving *non-paying* debtors, then the commercial life of each State is subject, in large measure, to Federal regulation; for example, Congress could divest State courts of jurisdiction over suits upon promissory notes between citizens of the same state; commercial controversies arising from breach of contract would fall under a like control; crimes such as the obtaining of goods or credits by false pretenses could be defined as crimes against the United States without regard for the powers reserved under the Tenth Amendment to the several States, and, indeed, the lines between State and Federal governments could be largely redrawn.†

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* Italics ours unless otherwise noted.

† For an account of the old Roman and Continental Bankruptcy laws, see Levinthal, *The Early History of Bankruptcy Law* (1918), 66 U. of Pa. L. Rev., 224.

For a general resumé of the bankruptcy laws in England at the time the Constitution was adopted, see 1 Remington on Bankruptcy, 4th Ed., pp. 1-13; Report of the Solicitor General on Bankruptcy Law and Prac-

We challenge the theory that the bankruptcy power of the Federal Government "comprehends every phase of the relations between an insolvent or *non-paying* or fraudulent debtor and his creditors" (R. 107). We submit that this all-embracing doctrine is without constitutional basis and should not, by this Court's sanction, now be written into the Constitution. We do not believe that this Court is ready to encourage a theory of bankruptcy powers, which may later be used for greater and still greater encroachment upon the powers reserved to the States, or to overrule the principles set out in its former decisions, and particularly in *United States* v. *Fox*, 95 U. S. 670.

In that case, this Court held unconstitutional, as an unwarranted invasion of the rights of the States, an Act of Congress making it a Federal offense, under the bankruptcy powers, for a person to obtain credit by false pretenses within three months before bankruptcy, saying (p. 672):

> "* * * And as it is authorized 'to establish uniform laws on the subject of bankruptcies throughout the United States,' it may embrace within its legislation whatever may be deemed important to a complete and effective bankrupt system. The object of such a system is to secure a *ratable distribution of the bankrupt's estate among his creditors*, when he is unable to discharge his obligations in full, and at the same time to relieve the honest debtor from legal proceedings for his

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tice, pp. 49, *et seq.*, Sen. Doc. No. 65, 72nd Cong., 1st Sess.; Levinthal, *The Early History of English Bankruptcy* (1919), 67 U. of Pa. L. Rev. 1.

For an account of Colonial insolvency or bankruptcy laws, see 2 Story on the Constitution, 5th Ed., §§ 1106-13; Olmstead *Bankruptcy a Commercial Regulation* (1902), 15 Harv. L. Rev. 829; Kaplan *Is Section 77B a Proper Part of a Bankruptcy Act?* (1935), XXI A. B. A. J. 47.

For developments in the Federal Bankruptcy Laws, see Madison "The Federalist" No. 42; *Sturges* v. *Crowninshield*, 4 Wheat. 122, 195; *Nelson* v. *Carland*, 1 How. 265, 269-274, Catron J.'s dissent; 2 Story on the Constitution, 5th Ed., §§ 1111-13; Olmstead *Bankruptcy a Commercial Regulation* (1902), 15 Harv. L. Rev. 829.

debts, upon a surrender of his property. *The distribution of the property is the principal object to be attained. The discharge of the debtor is merely incidental, and is granted only where his conduct has been free from fraud in the creation of his indebtedness or the disposition of his property.* • • •

But an act committed within a State, whether for a good or a bad purpose, or whether with an honest or a criminal intent, cannot be made an offence against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. *An act not having any such relation is one in respect to which the State can alone legislate.*"

To the effect that *distribution* is the principal object of all bankruptcy laws,* see *Straton* v. *New*, 283 U. S. 318, 320; *Bailey* v. *Glover*, 21 Wall. 342, 346; *Mayer* v. *Hellman*, 91 U. S. 496, 501; *Wiswall* v. *Campbell*, 93 U. S. 347, 350; *Acme Harvester Company* v. *Beekman Lumber Company*, 222 U. S. 300, 307; *Williams* v. *U. S. Fidelity & Guaranty Company*, 236 U. S. 549, 554.

In *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 186, this Court quoted with approval the following language of Mr. Justice Catron, while sitting as a Circuit Judge in *In re*

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* In *In re California Pacific Railroad Co.*, Fed. Cas. No. 2315, the Court said:

"The bankrupt act (14 Stat. 533) even if all provisions for the granting of discharges were stricken out, would still retain *the most important features of a bankruptcy law*, viz.: Those which act upon the debtor *in invitum*. Those provisions are founded on what the author of the bill declared to be *'the first principles of all such systems of laws,' viz.: 'That when insolvency beyond all reasonable chance of recovery occurs, the administration of the bankrupt's effects belongs to his creditors and not to himself.'*"

In Olmstead, *Bankruptcy a Commercial Regulation*, 15 Harv. L. Rev. 829, 843, it is said in speaking of bankruptcy:

"• • • *its main objects are administration or distribution, rather than the relief of the debtor.* Ex-Judge Addison Brown of New York, an able bankruptcy expert, in a decision under the present act says:

'The object of the bankruptcy act is declared to be "to establish a uniform system of bankruptcy throughout the United

Klein, 1 How. 277, 281, where he gave what is probably the most concise and accurate description of the limits of Congressional jurisdiction over "the subject of bankruptcies":

> "• • • Congress has general jurisdiction; and the true inquiry is—To what limits is that jurisdiction *restricted?*
>
> I hold, it extends to all cases where the law causes to be *distributed*, the property of the debtor among his creditors: this is its least limit. Its greatest, is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—*distribution and discharge*—are in the competency and discretion of Congress."

These words clearly referred to the *jurisdiction of Congress* and not to any particular Bankruptcy Act.* That *"distribution"* of the actual assets is an indispensable element in any bankruptcy law, was never, and should not now be, subject to doubt.

In the case at bar, the Circuit Court of Appeals said:

> "The challenged Statute provides for ratable distribution of the bankrupt's assets among his creditors" (R. 106).

We insist that the Act does *not* "distribute" the assets and was not intended to do so.

States." *The most fundamental element in every system of bankruptcy has been to provide for and regulate the distribution of the bankrupt's property among his creditors*, and to do this by means of the agencies created by the act. *That originally was its only purpose.* Later, a second element has been added in the provisions for the bankrupt's discharge, upon such terms and conditions as the act may prescribe. The present act fully provides for both of these objects.'"

For strong emphasis upon the necessity for *distribution*, see also *In re Reiman*, Fed. Cas. No. 11,673 at 495; *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. 637, 647; *In re Swofford Bros. Dry Goods Co.*, 180 Fed. 549, 556; *In re Jordan*, Fed. Cas. No. 7,514; *In re Vogler*, Fed. Cas. No. 16,986; 2 Story on the Constitution (5th Ed.), Section 1106; Levinthal, *The Early History of Bankruptcy Law*, 66 U. of Pa. L. Rev., at 225.

* See *In re Landquist*, 70 F. (2d) 929, 932-3, to the contrary.

A.

It Was Never the Purpose of the Frazier-Lemke Act to Distribute the Farmer's Assets, but Only to Scale Down His Debts, While Permitting Him to Retain His Assets.

No distribution was intended. The avowed *legislative purpose* was to "*scale down* existing farm indebtedness", and yet to leave the farmer in possession of the property.

Senate Report on S. 3580, May 28, 1934, frankly stated the legislative* purpose of the Frazier-Lemke Amendment:

> "In short, all that this amendment does is to carry out the purpose of section 75 and *adjust and scale down existing farm indebtedness* to the present value of his property, and it gives the debtor farmer *an opportunity to save his home and maintain his property* by paying for it on the installment plan while the property remains under the control of the court.
>
> * * * * * * * *
>
> This amendment will make it possible for the Federal Farm Credit Administration, through the Federal land banks, to function *by adjusting and scaling down the indebtedness* to somewhere within the reasonable value of the property."

House Report on H. R. 9566, May 31, 1934 (incorporating as a part thereof a memorandum of Representative Lemke), was equally frank:

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* It is well settled that Reports of Committees of House or Senate may be regarded as an exposition of the legislative intent in determining the purpose and meaning of a statute. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *Railroad Commission of Wisconsin* v. *Chicago B. & Q. R. R. Co.*, 257 U. S. 563. The same is true of explanatory statements made by the committee member in charge of a bill in the course of its passage. *Pennsylvania R. R. Co.* v. *International Coal Mining Co.*, 230 U. S. 184; *United States* v. *Coca Cola Company*, 241 U. S. 265; *United States* v. *St. Paul M. & M. Ry. Co.*, 247 U. S. 310, 318.

"Therefore, I respectfully submit that H. R. 9566 is constitutional; that in case the debtor and creditor cannot get together and conciliate under section 75 it provides an honest and efficient method of *scaling down indebtedness* to the present reasonable value of the debtor's property; * * *".

The purpose of the Act was openly declared by Representative Lemke (78 Cong. Rec., p. 12297, June 16, 1934):

"All that this bill does is to put teeth into section 75 of the Bankruptcy Act, which was passed during the closing days of the previous administration. It gives a farmer debtor an opportunity *to scale down his existing indebtedness* to the present value of his property and gives him an opportunity to pay that indebtedness on the installment plan with 1 per cent. interest. * * * *It will scale down farm indebtedness* to their present values so that the Farm Credit Administration can function. * * * It puts a few teeth into section 75 and makes it possible for the farmer *to keep his home* and to provide for his family until he is able to *meet his obligations properly scaled down.*"

The Frazier-Lemke Act is bottomed on principles entirely alien to established bankruptcy law. It is specifically directed against mortgagees and other secured creditors, and was enacted for the very purpose of depriving them of the collateral for which they had bargained and of giving it to the farmer-debtor.* This is clearly shown by the legislative history of the Act (*In re Bradford*, 7 F. Supp. 665, 675).

* The remarks of Representative Truax of Ohio reflect, perhaps, the Congressional temper:

"On June 18, 1934, the Congress of the United States passed H. R. 9865 [*sic* 9566], a new declaration of independence for the American farmer. When this law becomes effective I can but wonder what will become of the ruthless money lender when the breath of gold leaves his feculent body and a financial death stops the rattling of his grasping brain, for he is unfit for the higher realm of life and too foul for the one below. He cannot be buried in the earth, lest he provoke a pestilence; nor in the sea, lest he poison the fish; nor swing in space like Mahomet's coffin, lest the circling worlds in trying to avoid contamination, crash together, wreck the universe, and bring again the noisome reign of chaos and Satan" (78 Cong. Rec., 13062 [June 27, 1934]).

No true bankruptcy measure was ever contemplated; but only a *scaling down* of farmers' debts with an attendant moratorium.

B.

THE FRAZIER-LEMKE ACT SIMPLY SCALED DOWN RADFORD'S DEBT TO THE LAND BANK, WHILE PERMITTING RADFORD TO KEEP ALL HIS ASSETS.

By the appraisal provision [subsection (s) (1)], under which Radford's farm was appraised at $4,445., his indebtedness to the Land Bank was *automatically scaled down to that sum;* upon the payment of which, he became *ipso facto* entitled to (1) an absolutely free and unencumbered title to his farm, and (2) a discharge from the balance of his indebtedness to the Land Bank, which will be compelled to accept this $4,445 in lieu of its $9,000 mortgage with accumulated interest and charges.*

C.

THE FRAZIER-LEMKE ACT DID NOT IN FACT MAKE ANY DISTRIBUTION OF RADFORD'S ASSETS AMONG HIS CREDITORS.

As the result of Radford invoking the Act,

(1) The Land Bank was enjoined for five years, to-wit, until December 1, 1939, from enforcing its lien by

* The claims of the bank were as follows: (1) $7,063.43, together with interest thereon at the rate of 6% per annum from March 1, 1932, less a credit of $9.55; (2) $891.21, together with interest thereon at the rate of 6% per annum from September 1, 1932 (R. 71, 82-83).

It was stipulated that the annual taxes and insurance premiums amount to $105. The debtor who is now in possession has not been ordered to pay this; nor does the statute require that he should do so. It is to be presumed, therefore, that the trustee who holds the property must pay it out of the rent. The net rent is accordingly $220 (R. 80-82). The creditors must also carry the cost of administration.

the sale of the mortgaged property or otherwise; while Radford was expressly allowed to keep all his assets.

(2) Radford was given the opportunity to acquire at any time within five years, full ownership of the mortgaged property free of the lien.

(3) The Land Bank was compelled to give to Radford an option to pay (within five years) the appraised (or reappraised) value and obtain full title to the property free of all lien.

In form, such a proceeding was certainly not a "distribution".

It was not a *"distribution"* in substance or in any sense of the word. In lieu of the property or its proceeds at a fair sale, the Land Bank, as a mortgagee-creditor, was compelled to accept an optional undertaking of Radford to purchase the property within five years at less than half of the mortgage debt. This did not constitute a "distribution" of Radford's assets to his creditors.

If the value of Radford's farm decreased during the five-year period, or, if Radford lost his liking for the farm, he could decline to exercise his option, with the result that the Land Bank would be deprived of its right of distribution measured as of the date of Radford's alleged bankruptcy.

Instead of such a proceeding constituting a "distribution" of *Radford's* property among *his* creditors, a more accurate statement would seem to be that the Frazier-Lemke Act provided for a distribution of the *Land Bank's* property to Radford and his other creditors.

D.

THE CIRCUIT COURT OF APPEALS ERRONEOUSLY RELIED UPON SUPPOSED ANALOGIES TO (1) THE TRANSFER OF A CREDITOR'S LIEN TO THE PROCEEDS OF SALE, AND (2) "COMPOSITIONS" BINDING NON-ASSENTING CREDITORS.

The Circuit Court of Appeals, in sustaining the Frazier-Lemke Act as proper legislation on the "subject of bankruptcies", relied on the supposed analogy to the provisions in earlier acts (1) for a sale of a bankrupt's mortgaged property free of lien with a transfer of the lien to the proceeds of sale, and (2) for "compositions", by which the bankrupt retains possession of his property, upon the payment of an agreed sum, even against the wishes of a minority of non-assenting creditors.

To that argument, we reply:

1. *No analogy to the selling of mortgaged property free of lien.* There is no analogy here to the case of a bankruptcy court selling mortgaged property free of lien and transferring the creditors' lien to the proceeds of sale.

When a Bankruptcy Court believes it to be for the best interests of the general creditors, it may sell mortgaged property free of lien, and transfer the lien from the property to the proceeds of sale. This is constitutional, without the consent of the secured creditor (*Van Huffel* v. *Harkelrode*, 284 U. S. 225), because (1) the power is *discretionary* and may only be exercised by the Court when it thinks the general creditors will have an equity in the proceeds; and (2) the sale is invariably made so as to obtain the highest possible price for the property. No court would authorize a sale at a price *less* than that which the lien creditor himself offered to pay in cash for the property.

Therefore, the lower Court's analogy fails, because (1) the Frazier-Lemke Act gives the Bankruptcy Court no *discretionary* power to sell; (2) the Act does not provide as much money as possible for distribution to general creditors, but simply enables Radford to retain his property through the device of *scaling down* the Land Bank's debt; and (3) the mortgaged property was sold to Radford for *less than half* that which the Land Bank offered to pay for it in cash.

2. *No analogy to "compositions" binding on non-assenting creditors.* In response to the contention that the Frazier-Lemke Act provides for a "distribution" of the bankrupt's property to the same extent as do compositions and corporate reorganizations* authorized by Sections 12, 74 and 77 of the Bankruptcy Act, as amended, we submit:

These sections do not deprive the various "classes" of creditors of their right to demand "distribution". They merely set up machinery by which groups of creditors by class action may, if desired, waive their rights to distribution; and, with the approval of the Court, bind the dissenting minorities. The decisions upholding compositions and reorganizations, constitute no authority for the constitutionality of the Frazier-Lemke Act.

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* The Circuit Court of Appeals summed up its decision that the Frazier-Lemke Act was constitutional by saying (R. 112):

> "Finally, the grounds of complaint are in many respects similar to those upon which the constitutionality of section 77 of the Bankruptcy Act, 11 U. S. C. A. § 205 (providing for corporate reorganizations) has been assailed. While we express no opinion upon the validity of that section, the constitutionality of which will presently be passed upon by the Supreme Court, it is important to note that, so far as its provisions are similar to those here considered, they have not generally been considered incompatible with validity. *In re Chicago, R. I. & P. R. Co.*, 72 F. (2d) 443 (C. C. A. 7). Compare *In re Landquist*, 70 F. (2d) 929 (C. C. A. 7)."

These corporation reorganizations under Sections 74 and 77 of the Bankruptcy Act as amended are merely a form of composition. See *National Surety Company* v. *Coriell*, 289 U. S. 426, fn. at 437.

The reason for coercing the dissenting minority to accept the terms of a composition is given in *In re Lane*, 125 Fed. 772, 773 (approved in *Cumberland Glass Co.* v. *De Witt*, 237 U. S. 447, at 453), where it was stated:

> "The case of composition is in some respects exceptional. It is a proceeding voluntary on both sides, by which the debtor of his own motion offers to pay his creditors a certain percentage of their claims in exchange for a release from his liabilities. The amount offered may be less or more than would be realized through distribution in bankruptcy by the trustee. The creditors may accept this offer or they may refuse it. *For the purposes of the composition all the creditors are treated as a class, and the will of the majority is enforced upon the minority, provided the decision of the majority is approved by the court. Except for this coercion of the minority, the intervention of the court of bankruptcy would hardly be necessary.* • • • Composition is thus treated, even in the act, as in some respects outside of bankruptcy. • • • But if the composition is paid the creditors have no further claim upon the debtor or his property. In a composition the creditor gets, not his share of the bankrupt's estate, but what he bargained for, and he has no right to claim more.
>
> The effect of the composition proceeding is to substitute composition for bankruptcy proceedings in a certain sense, and in a measure to supersede the latter proceeding, and to reinvest the bankrupt with all his property free from the claims of his creditors."

In *In re Reiman* (Fed. Case No. 11,673), Mr. Justice Blatchford, then a District Judge, held that the 1874 amendment* of the Act of 1867 (which first authorized "compositions") was constitutional, on the theory that a majority of creditors could waive their right of distribution and bind the minority interests of the same class and that it did, in point of fact, *constitute a distribution* of the debtor's assets among his creditors, and for that reason was a bankruptcy law, saying (p. 495):

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*18 Stat. 182.

> "The principle on which the law of bankruptcy has, in legislation, been founded, is, that when a man becomes insolvent, *the property then remaining to him rightfully belongs to his creditors,* and ought to be distributed ratably among them towards satisfaction of their claims, the debtor himself being released from future liability in respect of his debtors, *upon giving all the aid in his power towards the realization and distribution of his estate for the benefit of his creditors,* and fulfilling the other conditions prescribed by the law for his discharge."

Compositions have never affected a secured claim, held in full by a single creditor, and that is because the "class" theory could not come into play. A composition applies only to property in which a group of creditors claims a share, and is based upon a majority agreement (binding on the minority) to take something else in lieu of their share, and to give the debtor a release of their joint claim. *International Shoe Co.* v. *Pinkus,* 278 U. S. 261, 262-3, 266-7; *Cumberland Glass Co.* v. *De Witt, supra; In re Reiman, supra* (20 Fed. Cas. at pp. 497, 502). In other words, compositions are based upon (1) the general equitable principle of equality and reciprocity among the creditors (*Zavelo* v. *Reeves,* 227 U. S. 625, 628), and (2) the democratic principle that a majority of a class similarly situated, shall control.

For the reasons given above, compositions have genally been regarded as auxiliary to, and, in a sense, merely a voluntary settlement of bankruptcy proceedings already instituted (*Meyers* v. *International Trust Co.,* 273 U. S. 380, 383; *Nassau Works* v. *Brightwood Co.,* 265 U. S. 269, 271-274; *Cumberland Glass Co.* v. *DeWitt,* 237 U. S. 447; *cf. Wilmot* v. *Mudge,* 103 U. S. 217). In fact, legislative recognition that "compositions" are not original bankruptcy proceedings in the strict sense, but merely supplementary thereto, is found in Section 12 (e) of the Bankruptcy Act.

In the case at bar the Circuit Court of Appeals casually passed over the doctrine expressed above on the ground that it was merely a rationalization, saying (R. 106):

> "Of course with respect to consenting creditors it [a composition] is a matter of agreement, *In re Lane*, 125 Fed. 772, 773; *Cumberland Glass Co.* v. *De-Witt*, 237 U. S. 447, 452, yet it is coercion as to non-assenting creditors, however it may be rationalized by considering creditors as a class with the will of the majority enforced upon the minority."

Whether a rationalization or not, "this principle [of majority rule] lies at the foundation of our Government". *In re Klein, supra* (14 Fed. Cas. 724).

Moreover, courts of equity have long had the power to compel dissenting creditors to submit to a plan which the creditors in the majority accept as beneficial.* Although dissenters have not in all cases been bound, this has never been because of lack of inherent power in a court of equity, but, rather, because either the plan violated some principle of fairness, or because the non-assenters had no adequate notice of or part in the reorganization proceedings.†

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* *Railroad Company* v. *Howard*, 7 Wall, 392; *Shaw* v. *Railroad Company*, 100 U. S. 605, 611-12; *Crosthwaite* v. *Moline Plow Co.*, 298 Fed. 466, 469; *St. Louis-San Francisco Railway* v. *McElvain*, 253 Fed. 123; *Simon* v. *New Orleans T. & M. R. Co.*, 242 Fed. 62; *P. R. Walsh Tie & Timber Co.* v. *Missouri Pacific Railway Co.*, 280 Fed. 38; *Temmer* v. *Denver Tramway Co.*, 18 F. (2d) 226; *Jameson* v. *Guaranty Trust Company of New York*, 20 F. (2d) 808; *Fearon* v. *Bankers Trust Company*, 238 Fed. 83; *Kansas City Terminal Railway Company* v. *Central Union Trust Company of New York*, 28 F. (2d) 177, certified questions answered 271 U. S. 445.

† *Kansas City Railway* v. *Guardian Trust Company*, 240 U. S. 166; *Ballentyne* v. *Smith*, 205 U. S. 285; *International Insurance Company* v. *Sherman*, 262 U. S. 346; *National Surety Company* v. *Coriell*, 289 U. S. 426; *First National Bank of Cincinnati* v. *Flershem*, 290 U. S. 504; *Guaranty Trust Company of New York* v. *Missouri Pacific Railway Co.*, 238 Fed. 812; *Graselli Chemical Co.* v. *Aetna Explosives Co.*, 252 Fed. 456;

So far as compelling the minority creditors to accept the will of the majority creditors is concerned, State courts have the same inherent equity powers as Federal courts.*

Independent of the doctrines of equity reorganizations, compositions may be sustained as valid legislation governing the enjoyment of a common property by its joint owners who cannot agree to its use (*Head* v. *Amoskeag Manufacturing Company*, 113 U. S. 9, 21 *et seq.*; see also 4 Kent's Commentaries, 14 ed., 370 *et seq.*; Co. Litt. 200b.) The same rule has been applied by Courts of Admiralty (*The Steam-boat Orleans* v. *Phoebus*, 11 Pet. 175, 183; see *The Ellenora*, 252 Fed. 209, in accord, and the cases therein cited).

In short, the Frazier-Lemke Act can not be sustained as a valid exercise of the Federal bankruptcy powers by analogy to compositions or on any other ground.

Harding v. *American Sumatra Tobacco Co.*, 14 F. (2d) 168; *Parker* v. *New England Oil Corporation*, 8 F. (2d) 392; *Northern Pacific Railway Co.* v. *Boyd*, 228 U. S. 482; *Louisville Trust Co.* v. *Louisville, etc. Railway*, 174 U. S. 674; *Mountain States Power Co.* v. *A. L. Jordan Lumber Co.*, 293 Fed. 502; *Western Union Telegraph Co.* v *United States & Mexican Trust Co.*, 221 Fed. 545.

* *Matter of National Surety Co.*, 239 App. Div. 490, aff'd 264 N. Y. 473; *Clinton Trust Co.* v. *Joralemon St. Corp.*, 237 App. Div. (N. Y.) 789, 790-93; *People* v. *S. W. Straus & Company, Inc.*, 149 Misc. (N. Y.) 38; *Eastern States Public Service Corp.* v. *Atlantic Public Utilities, Inc.*, 17 Del. Ch. 338, 340-1, 156 Atl. 214; *Hauer* v. *Appalachian Gas Corporation*, 19 Del. Ch. 283, 167 Atl. 839.

POINT II.

The Frazier-Lemke Act deprived the Land Bank of its property without due process of law by denying the Land Bank its fundamental right to have the mortgaged property applied to the payment of its debt.

Even if the Frazier-Lemke Act be considered a law "on the subject of Bankruptcies", still the power of Congress to legislate on the "subject of Bankruptcies" is subject to the limitations of the Fifth Amendment.

Each of the great substantive powers of Congress are qualified by, and subject to, the restrictions of the Fifth Amendment, as, for example, the war power,* the power to tax,† the power to exclude aliens,‡ and the power to regulate commerce.§

In *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 192, this Court expressly recognized that the bankruptcy power was subject to the Fifth Amendment, saying:

> "Congress may prescribe any regulations concerning discharge in bankruptcy that are *not so grossly unreasonable as to be incompatible with fundamental law*, * * *"

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* *Ex parte Milligan*, 4 Wall. 2, 119, *et seq.*; *Ochoa* v. *Hernandez*, 230 U. S. 139, 153-4; *Hamilton* v. *Ky. Dist. Co.*, 251 U. S. 146, 155.

† *U. S.* v. *R. R. Co.*, 17 Wall. 322; *Boyd* v. *U. S.*, 116 U. S. 616; *Nichols* v. *Coolidge*, 274 U. S. 531, 542; *Blodgett* v. *Holden*, 275 U. S. 142, 147; *Bromley & Co.* v. *Edwards*, 267 U. S. 442, 450; *Heiner* v. *Donnan*, 285 U. S. 312, 326.

‡ *Wong Wing* v. *U. S.*, 163 U. S. 228, 234, 237-8.

§ *Monongahela Nav. Co.* v. *U. S.*, 148 U. S. 312, 336; *U. S.* v. *Joint Traffic Assn.*, 171 U. S. 505, 571; *U. S.* v. *Cress*, 243 U. S. 316, 326; *U. S.* v. *Lynah*, 188 U. S. 445, 471; *Adair* v. *U. S.*, 208 U. S. 161, 180; *Carroll* v. *Greenwich Ins. Co.*, 199 U. S. 401, 410.

A.

The Fundamental Law Vests in a Mortgagee the Right to Have the Mortgaged Property Devoted Exclusively to the Satisfaction of the Mortgage Debt.

It has always been the fundamental law in this country that a mortgagee had the right to receive the full proceeds (up to the amount of his debt) of a sale of the mortgaged property. At the sale the mortgagee could protect himself by bidding in the property. In other words, the very essence of a mortgage was the right of the mortgagee to have the property devoted to the satisfaction of his debt.*

Until the passage of the Frazier-Lemke Act, no court or legislative body had ever provided that the debtor might keep the property for himself, while forcing the mortgagee to accept an amount less than his debt—an amount not determined by a sale of the property at which the general public, including the mortgagee, had the opportunity to bid.

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* See Wehle, *Railroad Reorganization Under Section 77 of the Bankruptcy Act: New Legislation Suggested* (1934), 44 Yale L. J., 197, 212:

"Under Anglo-American law, since long prior to 1787, the mortgagee on foreclosure sale has had the optional right either to accept the proceeds of a fair competitive sale (if not more than the amount of his claim), or, if the highest bid at such a sale be insufficient to pay the debt, to bid in the property for himself and have the amount of his bid credited on the mortgage debt; in other words (aside from the right to a deficiency judgment), the mortgagee has traditionally had an optional right either to the proceeds of a fair competitive public sale, or to the property itself. As to the right of the mortgagor to have the property for the amount of the debt, this is so generally familiar as to require no exposition here."

And again at page 229:

"* * * The foregoing records of legal authority, sufficiently indicate that the settled maxims of three hundred years of Anglo-American bankruptcy laws safeguard the creditor who is secured by a mortgage from the debtor, by rigidly insuring to him exclusive right, not only as against the mortgagor, but also as against other creditors, to the full value of the mortgaged property, with the further right to prove with other creditors for any deficiency."

For hundreds of years the laws of England and America have guaranteed to a mortgage creditor the exclusive right to have the full value of the mortgaged property applied towards the payment of his debt. Provisions for the discharge of the debtor from the balance of his personal obligation never before sought to interfere with that right.

Upon that fundamental principle was built up the whole system of credit, by which debtors were enabled to borrow money by mortgaging property to the lender. There would have been a very different credit history in this country and in England if it had ever been the law that a debtor could borrow money, pledge property to secure the payment thereof, and yet, upon default, retain the property for himself and prevent the lender from having the thing pledged devoted to the payment of the debt. When, in *Hanover National Bank* v. *Moyses, supra,* this Court said that the power of Congress to discharge a debtor in bankruptcy was subject to the limitation that its exercise should not be "so grossly unreasonable as to be incompatible with fundamental law", the "fundamental law" which this Court must have had in mind, was, at least, that a debtor should not be discharged from his debt and yet allowed to keep the mortgaged property against the creditor's consent. This is so because the "fundamental law" on the subject has always been, until the passage of the Frazier-Lemke Act, that the creditor was entitled to have the thing pledged devoted to the payment of his debt and that the right of the debtor to retain title to the property pledged, was subject to the paramount right of the creditor to have the property sold and the proceeds applied towards the payment of the creditor's claim.

While, of course, Congress under the power to pass laws on the subject of bankruptcies, can impair the obligation of contracts—for such is the very essence of bankruptcy law—

yet it cannot destroy vested rights of property, contrary to the law of the land.

In *Gunn* v. *Barry*, 15 Wall. 610, Georgia increased the amount of property exempt from execution levy. This Court held that the Georgia laws were void as against pre-existing indebtedness not only because they impaired the obligation of contracts but for an even more fundamental reason, saying (p. 622):

> "But the Act reaches still further. It withdraws the land from the lien of the judgment, and thus *destroys a vested right of property* which the creditor had acquired in the pursuit of the remedy to which he was entitled by the law as it stood when the judgment was recovered. *It is in effect taking one person's property and giving it to another without compensation. This is contrary to reason and justice, and to the fundamental principles of the social compact.*"

Congress, then, as now, was sympathetic with the idea of relieving debtors from their pre-existing debts; and because this Court had held in *Gunn* v. *Barry*, that the State could not do so, Congress endeavored to accomplish the same result under its bankruptcy power. It adopted an amendment of March 3, 1873, to the Bankruptcy Act, which, in part, provided for additional exemptions:

> "• • • to an amount allowed by the constitution and laws of each State, as existing in the year eighteen hundred and seventy-one [i. e., irrespective of whether or not those state constitutions and laws were valid]; and such exemptions shall be valid against debts contracted before the adoption and passage of such State constitution and laws, as well as those contracted after the same, and against liens by judgment or decree of any State court, any decision of any such court rendered since the adoption and passage of such constitution and laws to the contrary notwithstanding." (Act, March 3, 1873, c. 235; 17 Stat. p. 577).

In *Gunn* v. *Barry*, this Court had apparently anticipated just such action by Congress, with the following warning (15 Wall. at p. 623):

> "Congress cannot, by authorization or ratification, give the slightest effect to a State law or constitution in conflict with the Constitution of the United States. That instrument is above and beyond the power of Congress and the States, and is alike obligatory upon both."

The foregoing Bankruptcy Amendment of 1873 was attacked in *In re Dillard*, 2 Hughes, 190, Fed. Cas. No. 3912. In that case the Court pointed out that it would be violative of the Fifth Amendment for Congress to say that a debtor should have an exemption which the State could not give him, and which was not a real distribution of the debtor's estate among his creditors, but merely an opportunity for the debtor to keep a certain amount of his property out of his creditors' reach. The Court (striving to save the constitutionality of the amendment) disregarded its expressly retroactive language and gave it a purely prospective meaning, saying (p. 706):

> "It is contended at bar that the act of March 3, 1873, is not an act which gives wider scope or more force to the state exemption laws, which heretofore have been the only authority for homestead exemption in the bankruptcy courts, but that it, itself, provides a statutory exemption paramount to all liens of judgments and decrees of whatever date, and is only limited in amount by the provision of the state statute. *If the act of March 3, 1873, intends to give the state exemption laws quo state laws a force and power which the state could not give them, then it is void* * * *.
>
> We must not, if we can avoid it, give to the act of congress such a construction as would be contrary to reason and justice. We must not suppose they intended to violate the fundamental principles of the social compact. *Yet, to say congress has provided, by the act of March 3, 1873, that every bankrupt shall have his property restored to him, freed from the liens vested in his creditors*

prior to the passage of that act, is to hold that they have done as the legislature of Georgia had done, i.e., enacted a law contrary to reason and justice, and, in the view of the Supreme Court, subversive of the fundamental principles of the social compact. Gunn v. Barry (supra). Such a view cannot be entertained. There is but one other construction to be given to the statute, and that is, that like all statutes it is prospective."

The oft-quoted language in *Loan Ass'n v. Topeka*, 20 Wall. 655, 662, 664, provides an answer to the popular cry that Congress should be able to adopt legislation in order to relieve debtors from their improvident obligations at the expense of their creditors, and yet permit the debtors to retain the property which they had pledged as security for the money borrowed:

"The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.

There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute * * * *which should enact that the homestead now owned by A. should no longer be his, but should henceforth be the property of B.* * * *

This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.

To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."

In *Ochoa* v. *Hernandez*, 230 U. S. 139, 161, it was said:

> "Without the guaranty of 'due process' the right of private property cannot be said to exist, in the sense in which it is known to our laws. The principle, known to the common law before Magna Charta, was embodied in that charter (Coke, 2 Inst. 45, 50), and has been recognized since the Revolution as among the safest foundations of our institutions. *Whatever else may be uncertain about the definition of the term 'due process of law', all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing.*"

B.

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE FOREGOING RIGHT OF THE LAND BANK WAS NOT INVADED.

In holding that the Land Bank was not deprived of its property without due process of law by being compelled to give Radford a five-year option to pay the appraised value of $4,445 (or a value fixed by reappraisal at that future date selected by Radford), for the property free and clear of the Lank Bank's lien of $9,200, the Circuit Court of Appeals reasoned that whatever loss the Land Bank would sustain was through Radford's insolvency and that it could sustain no additional loss through the operation of the Frazier-Lemke Act requiring the sale to Radford at the appraised "fair value", because,

> (1) The $4,445 appraised "fair value" must be and was at least the full market value, and the Land Bank's bid of $9,205.09 for the property "had no possible bearing upon the *fair value*".
>
> (2) The provision of the Act requiring a reappraisal at the time Radford exercised his purchase option gives the Land Bank the benefit of any possible enhanced value of the property.

To these conclusions we respond:

1. That in addition to any loss already sustained through Radford's insolvency, the Land Bank will sustain further loss through a sale to Radford at the $4,445 appraised "fair value", because

(a) That value is not equivalent to the present market value; and

(b) The Land Bank will be deprived of any possible enhanced value.

(a) Even the Circuit Court of Appeals admitted that if the appraised "fair value" was *lower* than the market value, it would not stand the test of judicial review.

We submit that the "fair value" of $4,445 *was lower* than the "market" value.

Before the enactment of the Frazier-Lemke Act the Land Bank offered to accept a deed to the property in satisfaction of its indebtedness (then approximately $9,000.) and, after the passage of the Act, offered in open court to pay $9,205.09 for the property. The Circuit Court of Appeals insisted that these bids had no possible bearing upon the value of the property. But these bids did have a decided bearing on the market value of the property. They may not have conclusively established the market value of the property at $9,205.09; but they certainly showed that the market value exceeded $4,445. The property must have been worth more than $4,445, otherwise the Land Bank would have been willing to accept that sum and would not have preferred to take the property in full payment of its $9,205.09 claim against Radford.

We submit that the Circuit Court of Appeals erred in holding that the $4,445 appraised "fair value" was necessarily the market value or higher, for the simple reason that the Land Bank offered to pay more than $4,445 for

it. After all, the test of market value is what somebody is willing to pay for the property (Cf. *Adams Express Co.* v. *Ohio*, 166 U. S. 185, 220, 222).

(b) Radford could purchase the property for $4,445 and deprive the Land Bank of any possible benefit from an increased value of the mortgaged property. But for the Frazier-Lemke Act, the property would have been sold at a fair competitive public sale at which the Land Bank could protect itself by bidding in the property and holding it for an enhanced value.

In depriving the Land Bank of its right to receive a sum equal to the market value of the mortgaged property and of its right to bid in the property itself and benefit from increased values, the Frazier-Lemke Act deprives the Land Bank of its property without due process of law.

2. The reappraisal provision of the Frazier-Lemke Act does not safeguard to the Land Bank the right to benefit from any enhanced value of the mortgaged property.

The Land Bank cannot require reappraisal at the time when, in its judgment, the opportune time to sell to Radford will have come—that is, when the farm will have reached its peak value at some time within the five-year period. Radford alone can determine the time at which that reappraisal is to be made. It is made only when Radford exercises his purchase option. This he can do at *any time* during the five-year stay period. It is entirely possible that through a continuance of the present Federal subsidies to farmers, and inflation, the mortgaged property will acquire a high temporary artificial rating which may collapse before Radford exercises his purchase option. If so, the Bank can derive no benefit through the increased value.

As the option is in Radford, he will certainly not elect to purchase the property at a high value if he believes that he can wait until the end of the five-year stay period and buy the property for less.

It is clear, therefore, that the reappraisal provision does not necessarily enable the Land Bank to benefit from an enhanced value of the mortgaged property.

To summarize:

The reasons given by the Circuit Court of Appeals in support of the Act do not meet the real issue presented. The Court undertakes to demonstrate that the Land Bank and others similarly situated will not suffer further financial loss by the operation of the Frazier-Lemke Act; and that, therefore, the Act should be upheld.

We dispute the accuracy of the Court's financial forecast; and we insist, in addition, that it is beside the point.

The question is whether or not the Act is repugnant to the deep-rooted principles of American law relating to the rights of a mortgagee. Heretofore a mortgagee has had a vested right to have the mortgaged property devoted exclusively to the satisfaction of the mortgage debt, either by receipt of the proceeds of a fair competitive public sale or by application of the property itself. No one has yet had the hardihood to argue that the Frazier-Lemke Act actually preserves this right. The argument is that the Act provides a substitute; that the arrangement giving the mortgagee an appraised value is the equivalent of his traditional right; and that on an *injuria absque damno* theory the Act should be sustained. This, we submit, is a denial of due process in that it constitutes a taking of the Land Bank's property for the benefit, and private use, of Radford, contrary to the settled usages and maxims of the fundamental law of the land.

POINT III.

The Frazier-Lemke Act contains provisions so unreasonable, capricious and arbitrary that the Land Bank is deprived of its property without due process of law.

This unreasonable and arbitrary character appears in every division of the subject matter to which the Act is addressed.

1. In the Creditors Chosen for Attack.*

(a) Discrimination between creditors before and after June 28, 1934.

The only creditors who are restrained by the Frazier-Lemke Act are those whose claims existed on June 28, 1934. The Act expressly excludes from its effect all debts, secured or unsecured, created *after* June 28, 1934; such creditors retain their rights against the debtor intact and may enforce them to the fullest extent—while, as just shown, all debts before June 28, 1934, no matter how close to that

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* The Land Bank is a Federal Agency; and all notes and mortgages taken by it (such as Radford's) and the bonds secured thereby, are "instrumentalities of the Government of the United States" and as such exempt from all taxation; and the bonds are expressly declared to be "a lawful investment for all fiduciary and trust funds" (39 Stat. 380). In accordance with that authority Radford's farm in 1922-24 was appraised at $18,000; his notes and mortgages to the Land Bank are "instrumentalities of the Government of the United States;" and the Land Bank bonds secured by the Radford notes and mortgages are a "lawful investment for all fiduciary and trust funds" (*Smith* v. *Kansas City Title Co.*, 255 U. S. 180; *Federal Land Bank of New Orleans* v. *Crosland*, 261 U. S. 374).

In the face of those provisions, Radford now contends that under the Frazier-Lemke Act, the Land Bank and the holders of its bonds although

dividing line, are suspended in midair. In the application of a national bankruptcy law to a *non-paying* debtor, this discrimination between creditors whose claims existed *before* and those whose claims arose *after* June 28, 1934, is a purely arbitrary discrimination, with no just basis to support it.

(*b*) Discrimination between creditors secured by exempt property and those secured by non-exempt property.

The creditor holding a lien on exempt property *is favored over the creditor holding a lien on non-exempt property.* After a farmer's exempt property has been appraised and set aside to him, subsection (s) is no longer applicable to that property [*Zapalac* v. *White*, 9 F. Supp. 419 (S. D. Tex., 1934); *In re McMurray*, 8 F. Supp. 449 (S. D. Iowa, 1934)]. Exempt property is, however, subject to mortgages on it under the laws of many States, and the creditor may pursue his State remedy against the exemptions once they have been set aside to the debtor, for the jurisdiction of the Bankruptcy Court over exemptions then ceases (*Lockwood* v. *Exchange Bank*, 190 U. S. 294; *In re Osterritter*, 3 F. Supp. 674; see also Hook, *Does the Frazier-Lemke Amendment Grant Relief as to Debts Secured by Liens on Exempt Property?* (1934), 11 A. B. Rev., 21.) The creditor with a lien on exempt property might possibly realize more than *the appraised value* of

"instrumentalities of the Government of the United States" must nevertheless surrender the security and accept an appraised value, and the beneficiaries of the "fiduciary and trust fund" investments must stand the loss, while Radford retains his property unimpaired.

If, at the time, when the Land Bank took the Radford notes and mortgages and issued bonds with them as the security therefor, it had been suggested that it was within the power of Congress to authorize under the Bankruptcy power a proceeding which would take away the real estate security for the bonds and substitute therefor the value fixed by some local appraisers, it is inconceivable that investors would ever have purchased the securities.

the property so set aside, and the Bankruptcy Court would have no jurisdiction to compel him to pay the excess over the appraised value to the general creditors.

2. In Its Extinction Not Only of the Lien, But of the Contract.

(*a*) No provision is made for a deficiency claim by the mortgagee against the bankrupt's estate. The legislative intent was to abolish deficiency judgments by "scaling down" the mortgage indebtedness. (Senate Report on S. 3580, May 28, 1934; House Report on H. R. 9566, May 31, 1934; Remarks of Representative Lemke (78 Cong. Rec., p. 12297, June 16, 1934.) *In re Bradford*, 7 F. Supp. 665, 675, held that no deficiency claim should be allowed.* The press statement of President Roosevelt in approving the bill expressly stated:

> "It will prevent *deficiency judgments*—a form of liability which, in the judgment of many thinking business men ought to be abolished" (New York Times, June 30, 1934).

"Thinking business men" to the contrary notwithstanding, this is a wholly arbitrary destruction of a contract right.

(*b*) Interest on the mortgage debt is wiped out save (1) in so far as a negligible amount may be realized from the rental (here only $325), after payment of taxes and insurance (here $105), upkeep of the property, and costs of bankruptcy administration; and, perhaps, (2) a very nebulous possible right to participate with general creditors in such amount

* Judge Dawson (R. 58) said that the mortgagee had a deficiency claim.

as is realized from unpledged property (but only if the statute is construed, contrary to the intent of its authors, to permit a deficiency claim over against the bankrupt estate).

(c) The fixing of the value of the debtor's property by appraisal at its "then fair and reasonable value, not necessarily the market value," is arbitrary, capricious and unreasonable. No guide, rule or standard is offered by which this "fair and reasonable value" is to be reached. Here the Bank offered to pay $9,205.09 in cash for the mortgaged property, but its value was fixed at $4,445. If the Bank's offer had been accepted, its claim would have been satisfied, and the value of all of Radford's unpledged property would have been applied on his other debts. But if Radford elects to purchase the mortgaged property at $4,445, the Bank will either (1) have, perhaps, a deficiency claim for $4,760, and be entitled to a pro rata share of his unpledged assets thereby greatly reducing the amount which can be paid to general creditors, or (2) on the other and more probable construction have $4,760 of its debt confiscated for Radford's benefit and for the benefit of his general creditors.

(d) All risk of a decline in value is placed on the creditor, with the option in the debtor to abandon the proceedings if at any time he deems it expedient to do so.

(e) The arbitrary operation of this Act is illustrated by the possibility in many cases of a mortgagee or secured creditor being worse off than the unsecured creditor. The debtor, for instance, may owe the mortgagee $10,000 secured by a first mortgage on a farm. The reasonable value of the mortgaged property by appraisal or reappraisal is determined to be $6,000. The debtor owes general creditors $10,000. His unpledged property, real and personal, is worth $8,000. Gen-

eral creditors would get 80% of the face value of their claims, and the secured creditor would get only 60% of the face value of his claim. If all of the debtor's property were thrown into *hotchpot* and divided pro rata among the secured and general creditors, each creditor would receive 70% of his claim. *The mortgagee is penalized 10% for having taken security.*

3. In the Method of Procedure.

(*a*) As to the relative rights of secured and unsecured creditors in electing between [(s) (3)] and [(s) (7)].

(1). Secured creditors are prohibited from enforcing their mortgages, and are compelled to accept either a six-year sale on the instalment plan [(s) (3)], or a five-year stay of all proceedings [(s) (7)].

(2) *Unsecured* creditors have no voice in determining whether the six-year sale plan shall be adopted in preference to the five-year stay plan. The choice lies with the *secured* creditors alone. To have the *unsecured* creditors' fate depend solely upon the decision of *secured* creditors, whose interests are not identical, and, in most cases, adverse, is capricious legislation. (*Eubank* v. *Richmond*, 226 U. S. 137.)

(*b*) As to the reappraisal provisions.

(1) Only *encumbered real estate* is subject to the reappraisal provisions, and then only upon the request of the lienholder.

(2) *There is no provision for reappraisal of unencumbered realty.* General creditors (including the Land Bank if the Act be construed to give it any claim for a deficiency) cannot have the full value of the farmer's

property applied to the payment of their claims at the time their debts are extinguished. Instead, where the debtor elects to retain all rather than a part of his property as the Act expressly permits, they must be satisfied with the value placed on unencumbered property by appraisal made *five years earlier*, even though (*a*) the value of the property shall have become greatly enhanced, and (*b*) at the time the appraisal was made, they might have been willing to bid much more than the appraised value of the property.

According to the appraisers' report, Radford owned some unencumbered realty (R. 87). Suppose oil should be discovered on Radford's unencumbered land within five years? If so, he alone would receive the increased value, while his creditors would only receive the amount of the original appraisement.

(3) *There is no provision for a reappraisal of personal property pledged or unpledged.** Therefore, a creditor secured by personalty, is bound by the *original* appraisal, even though the collateral appreciably increases in value during the period in which the debtor retains possession of it. Such a secured creditor is denied the right to have the full value of his security applied to the payment of his claim at the time the debt is extinguished. Instead,

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* As Representative Hancock of New York put it (78 Cong. Rec., p. 12294, June 16, 1934):

"This bill does not apply to mortgages on real estate only but it applies to liens on all kinds of property and pledges as well. For example, a farmer may buy an automobile on a conditional contract, or a radio, or he may have a chattel mortgage on his cows and pigs and on his furniture. He may have pledged stocks and bonds at the village bank to secure a loan, and he may have a mortgage on his real estate. If he goes into bankruptcy, every one of those liens is reduced to the reappraised value of the articles they cover, to the then value of the property covered by the lien, and it can never be restored to the original amount, no matter how much values increase."

he must look to, and share with unsecured creditors in, any other assets of the farmer, for the balance of a claim, which might be paid in full by the liquidation of the specific collateral pledged on his loan.

Unsecured creditors likewise must accept their share of the original appraised value of the unencumbered property, real and personal, regardless of subsequent appreciation.

(4) Thus, at any time within five years, Radford has the option to buy back (a) not only his unencumbed *real* estate, but also (b) his *personal* estate, whether encumbered or not,—all at the value placed upon them by the *original* appraisal, whereas their actual value, at the time he exercises his option (when the depression may have passed away, or inflation may have trebled values or new uses have been discovered), may be far greater than the original appraised value which he is permitted to pay. This may give to the debtor a handsome fortune, free from the claims of his creditors. He pays nothing for the gamble.

4. In Its Rigid Fixation of Terms by Legislative Fiat.

(*a*) Duration of stay.

(1) ***All proceedings are stayed*** for the fixed ***arbitrary period of five years without regard to whether any emergency exists for so long a time.*** The creditor cannot, for five years, take any step, either in a State or Federal court, to enforce his mortgage lien, or to collect the rents and profits, even though they are specifically mortgaged to him (*as in this case*, R. 18, 27), or otherwise to obtain any equitable relief whatsoever.

(2) Since the proceeding can be instituted at any time before March 3, 1938, the *period of the stay may extend to* March 3, 1943, or *more than nine years* from the date of the passage of the Act and the incurring of any indebtedness to which the Act applies—all this entirely without regard to the future situation of the debtor or the general economic condition of the country.

(3) The Court has no discretion concerning the minimum duration of the stay, the debtor's possession of the property, or the terms upon which he may repurchase—all this being fixed by legislative, not judicial, decree.

(*b*) Terms of purchase.

(1) At any time within the five-year period, the farmer debtor has the *option* (1) to pay the *appraised* or the reappraised *value* of the property, thereby *discharge the mortgage debt* and take the property or (2) throw the property back on the hands of the mortgagees or the Court. Not until the full period has elapsed can the creditor have any notion of his rights.

(2) The mortgagee is compelled to permit the farmer to buy back the property at an appraised value (not necessarily the market value), and be released from his indebtedness, even though the mortgagee or the general public would bid much more than the appraised or reappraised value for the property. The mortgagee is thereby deprived of the opportunity (1) to receive from the general public what the property would sell for, or (2) to bid the amount of the debt for the property, so as to obtain at least that property which was specifically pledged to secure the loan which he made to the farmer.

(c) Terms of Possession in Interim.

(1) The debtor *remains in possession* for five years, thereby ousting the creditor of all of the rights* given under the mortgage, and under the laws of the State where the property is located.

(2) All that the debtor has to pay for the enjoyment of these privileges—which are purely at his option—is "a reasonable rental annually for that part of the property of which he retains possession," which rental is then to be distributed between the secured and unsecured creditors, as their interests may appear.

(3) *The first payment of rent does not have to be made for six months.* The debtor's possession for the first six months is without compensation or security. During that period he may harvest and sell his crops, consume or make away with the proceeds and abandon his Frazier-Lemke proceeding, leaving his mortgage

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* See Judge Chestnut's opinion in *In Re Bradford*, 7 F. Supp. 665, 675, where it is pointed out that paragraph 7 of the Frazier-Lemke Act "makes very substantial changes in the rights of the mortgagee.

The most important are: (1) His right to realize on the security, in event of default, is suspended for five years. This period is fixed and absolute, without relation to the continuance of or change in existing conditions, and without judicial determination of adequate cause, or power of change to adjust to altered conditions; (2) at the end of the period the title to the security is transferred to the mortgagor upon payment of a sum determined by appraisers (subject to a somewhat uncertain judicial review) and which may be for an amount substantially less than the mortgage debt; (3) no provision is made for a deficiency claim by the mortgagee against the bankrupt's estate; (4) during the five year period a reasonable rental is to be paid, but the first payment is to be deferred for six months without security therefor, other than sale upon default. The effect of this may be at least a six months moratorium without *any* compensation therefor to the mortgagee, during which time the mortgagor retains the use and enjoyment of the property."

creditor to take the land *minus* the crops mortgaged to him (they are so mortgaged in the case at bar).

(4) *No provision is made for the payment of taxes, insurance or repairs, in contrast to the express requirement of paragraph (3) of the Frazier-Lemke Act.* If the Trustee in Bankruptcy should apply the rental to those purposes, there is no assurance that the mortgagee would receive a dollar during the five years. In this case, on a $9,200 indebtedness, the Bank will only receive such share as may be distributed to it out of what is left of $220, after payment of the cost of administration and upkeep of the mortgaged property.

A.

CERTAIN OF THESE ARBITRARY FEATURES MAY BE FURTHER CONSIDERED:

1. *The discrimination between debts contracted prior to June 28, 1934, and debts contracted thereafter is a violation of the due process clause of the Fifth Amendment.*

The discrimination attempted by the Frazier-Lemke Act between creditors prior to June 28, 1934, and creditors after June 28, 1934, has no justifiable basis. Only one suggestion* has been put forward in support of it, namely, that if obligations incurred after June 28, 1934, were not exempted then the farmer might not be able to obtain new credit. This, in itself, exposes the unreasonableness of the exemption. A

* This proviso was added to the Frazier-Lemke Act at the last minute upon the insistence of Senator Bankhead, 78 Cong. Rec. 12,253, 12,254, 12,256, June 16, 1934; *ibid.* 12,471, June 18, 1934.

first mortgage given on June 27, 1934 is scaled down. A second mortgage given on June 29, 1934 on the same property escapes the Act. No possible basis for distinction between the two exists. After the debtor pays to the first mortgagee the appraised price, the second mortgagee has not only an unimpaired mortgage in full force and effect but also one which becomes the senior lien upon the land. *The incongruous result is that a debt junior in point of time and junior in point of lien would prevail over a debt senior in point of time and senior in point of lien.*

Further, the proviso excluding from the application of the Frazier-Lemke Act all debts incurred after June 28, 1934, produces discriminations so complex that the Act is not only void but wholly unworkable. There will be presented the anomalous situation where the debtor will be going through bankruptcy under the Frazier-Lemke Act so far as one set of creditors is concerned, and, perhaps not in bankruptcy at all so far as the other set of creditors is concerned. A consideration of the probable rights of the two sets of creditors in those circumstances is too involved to warrant more than mention.

If, however, the debtor be in bankruptcy for both sets of creditors, then would arise complicated questions of marshalling the bankrupt's assets and the administration of his estate with due regard for the rights of creditors with claims arising after June 28, 1934. The Act makes no distinction between property acquired by the bankrupt before or after June 28, 1934. Both sets of general creditors would ordinarily have recourse against all of the free assets of the bankrupt to satisfy their respective claims. But, creditors whose claims arose before June 28, 1934, must leave all the assets in the hands of the debtor until he chooses within five years to pay

their appraised value; while creditors whose claims arose after June 28, 1934, presumably have the right, expressly reserved by statute, to have all of the same assets converted into cash and the proceeds distributed forthwith. How these questions will be resolved in each case is wholly unpredictable. Suffice it to say that the Act itself, being contradictory in terms, affords no solution.

That an arbitrary classification, resulting in an unreasonable discrimination, is a violation of the due process clause of the Fifth Amendment was recently and unequivocally established by this Court in *Heiner* v. *Donnan*, 285 U. S. 312, where a provision of the Revenue Act of 1926 declaring that all gifts made within two years before death were conclusively presumed to have been made in contemplation of death, was held a violation of the due process clause of the Fifth Amendment.*

There was no question but that Congress had the power to tax gifts *inter vivos* as well as testamentary gifts. The only question involved was whether the distinction between gifts made two years and one day before death and those made within two years before the death of the donor was

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* There can be no doubt that the denial of equal protection of the laws constitutes lack of due process.

In *Truax* v. *Corrigan*, 257 U. S. 312, 332, this Court, in holding unconstitutional the Arizona Anti-Injunction Law on the ground that it was a denial of equal protection, indicated that the Act could also have been held void under the due process clause, which *Heiner* v. *Donnan*, *supra*, shows to be the same in both amendments. Mr. Chief Justice Taft said:

> "Our whole system of law is predicated on the general, fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws."

arbitrary and unreasonable. Mr. Justice Sutherland said (p. 331):

> "In the *Schlesinger* case, the Supreme Court of Wisconsin had expressly held that the tax could not be supported as one on gifts *inter vivos* only, saying, 'Under such taxation the classification is wholly arbitrary and void. We perceive no more reason why such gifts *inter vivos* should be taxed than gifts made within six years of marriage or any other event. It is because only one class of gifts closely connected with and a part of the inheritance tax law is created that the law becomes valid.' *Estate of Schlesinger*, 184 Wis. 1, 10; 199 N. W. 951. This court accepted that view in these words (p. 239): 'The court below declared that a tax on gifts *inter vivos* only could not be so laid as to hit those made within six years of the donor's death and exempt all others—this would be "wholly arbitrary." We agree with this view and are of opinion that such a classification would be in plain conflict with the Fourteenth Amendment.' And it follows that the present provision, written in almost identical terms, is in plain conflict with the Fifth Amendment."

See also *Schlesinger* v. *Wisconsin*, 270 U. S. 230; *Louisville Gas & Elec. Co.* v. *Coleman*, 277 U. S. 32.

If the attempted exercise by Congress of its plenary power to tax is unconstitutional because of the arbitrary classification between gifts made within two years and gifts made more than two years before the death of the donor, certainly the classification in the Frazier-Lemke Act between debts contracted prior to June 28, 1934, and debts contracted after that date is a violation of the due process clause of the Fifth Amendment.

A case very closely in point is *Bronson* v. *Kinzie*, 1 How. 311, where this Court ruled that the Illinois statute of February 27, 1841, regulating execution sales violated the "contract" clause of the Constitution. Recognizing the con-

trolling principle of equality which the Fourteenth Amendment later expressed, Mr. Chief Justice Taney said (p. 320):

> "And this law is still more objectionable, because it is not a general one, and prescribing the mode of selling mortgaged premises in all cases, but is confined to judgments rendered, and contracts made, prior to the 1st of May, 1841. The act was passed on the 27th of February in that year; and it operates mainly on past contracts, and not on future. If the contracts intended to be affected by it had been specifically enumerated in the law, and these conditions applied to them, while other contracts of the same description were to be enforced in the ordinary course of legal proceedings, no one would doubt that such a law was unconstitutional. Here a particular class of contracts is selected, and encumbered with these new conditions; and *it can make no difference, in principle, whether they are described by the names of the parties, or by the time at which they were made*".

2. *The Frazier-Lemke Act is a Legislative invasion of the Judicial power contrary to Article III, Section 1 of the Constitution.*

As we have seen (pp. 3, 7, 40-43, *supra*), the Act makes it compulsory that a Court issue a peremptory mandate staying all proceedings for a fixed period of five years. This, the Court must do, and having done it, must maintain it without regard to the circumstances of either debtor or creditor. The very essence of judicial power is to render judgment as the facts of each particular case require. With this fundamental power of the Judiciary, Congress may not interfere. It can, of course, within limits, define the rights of the parties who invoke a statute, but it cannot, by legislative fiat, create rights in individuals which will deprive the Courts of their inherent functions.

The Frazier-Lemke Act allows the Bankruptcy Court little or no discretion. The length of the stay must be five years if the debtor so desires and the debtor must be discharged upon the payment at his option of the appraised value of the property. The administration of the debtor's estate is dictated by statute. The Court has no authority to compel the debtor to pay off his creditors even at prices set by appraisals or reappraisals. Stripped of the power to bring the proceedings to an end, the Court must stand by, leaving all, by legislative decree, to the whim of the debtor. So it is, that the Court is divested of authority to prevent a debtor from abandoning the arrangement (forced upon his creditors by paragraph 7) even where good conscience demands and circumstances permit its consummation.

The only discretion left to the Court is to confirm the value fixed by the appraisers and to approve a "reasonable" rental for the land of which the debtor retains possession. Evidently the Court must confirm the appraised value unless collusion or fraud on the part of the appraisers is shown. Certainly both Courts below felt that it was not within what was left of their discretion to upset the value fixed by the appraisers on the ground that it was less than half the Land Bank's cash offer. Nor does it seem that the Court is given any extensive discretion in fixing the rental which the debtor must pay during the five-year interim. The rental, by the natural construction of the terms of the statute, must be based upon the appraised value of the land which the farmer retains and must not take into consideration any other assets which the farmer happens to own. By the terms of the Act, there is not, and can not be a judicial investigation and determination of the merits of each proceeding.

In *Ogden* v. *Saunders*, 12 Wheat. 213, 365, Mr. Justice Johnson said:

> "Every bankrupt or insolvent system in the world, must partake of the character of a judicial investigation. Parties whose rights are to be affected, are entitled to a hearing."

The Frazier-Lemke Act goes beyond the mere denial of a creditor's right to a hearing. It renders a hearing absolutely futile because the Court, as seen above, is without power to decide on the merits the cardinal questions at issue. This, it is submitted, is not only a denial of due process of law, but represents an attempted exercise by the Congress of judicial powers which, by Article III, Section 1 of the Constitution, are confided exclusively to the Judiciary.

It is well settled that the Legislative branch of the Government cannot, by its own fiat, usurp the functions of the Judiciary.

In *Kilbourn* v. *Thompson*, 103 U. S. 168, this Court said (p. 192):

> "The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. If what we have said of the division of the powers of the government among the three departments be sound, this is equivalent to a declaration that no judicial power is vested in the Congress or either branch of it, save in the cases specifically enumerated to which we have referred. If the investigation which the committee was directed to make was judicial in its character, and could only be properly and successfully made by a court of justice, and if it related to a matter wherein relief or redress could be had only by a judicial proceeding, we do not, after what has been said, deem it necessary to discuss the proposition that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legis-

lative department of the government. We think it equally clear that the power asserted is judicial and not legislative."

The inflexible denial to the creditor of any remedy in a Federal or State court for a period of five years is an invalid exercise by the Legislature of a judicial function, and is, we submit, unconstitutional as in violation of Article III of the Federal Constitution.

The case of *Burt* v. *Williams*, 24 Ark. 91, is apposite. There the Supreme Court of Arkansas in 1863 held void a statute which provided for a stay of suits "until after the ratification of peace between the United States and the Confederate States." After discussing other grounds of constitutional objection, the Court said (p. 94):

> "No fact is to be ascertained by the courts, no application of legal principle is to be made to the fact that the legislature has ascertained, but the courts, as registers of the legislative will, are to record its edict, closing indefinitely the temple of justice to all its suitors.
>
> This is not the manner in which courts exercise judicial functions, is not a proper subject, or legitimate use of legislative authority, inasmuch as the powers of the government of this state are divided by the constitution into distinct departments, each of which is confided to a separate magistracy: the legislative powers to the general assembly, the judicial powers to the judiciary. *Constitution, art. iii.*"

See also to the same effect:

Riglander v. *Star Co.*, 98 App. Div. 101, 103, 105, aff'd 181 N. Y. 531;

Bell v. *Niewahner*, 54 App. Div. (N. Y.) 530;

Barnes v. *Barnes*, 53 N. C. 366, 374.

POINT IV.

The Frazier-Lemke Act cannot be sustained on any doctrine related to an emergency.

Undoubtedly it will be urged that the Frazier-Lemke Act can be sustained on the authority of *Home Building & Loan Assn.* v. *Blaisdell,* 290 U. S. 398, wherein this Court decided, in substance, that, under the reserved power of the States, Minnesota could, during the continuance of a declared emergency, and in no event longer than about two years, postpone the enforcement of mortgage liens and permit the debtor to remain in possession of his property, upon the payment of the reasonable rental value thereof.

The Minnesota Act, however, was of a very different color. As summarized in the opinion of this Court (pp. 425, 447), the Minnesota statute did not (a) impair the integrity of the mortgage indebtedness; (b) the obligation for interest remained; (c) the right of a mortgagee-purchaser to title in fee was not affected; (d) the right to a deficiency judgment failing redemption remained; (e) the rental was devoted to the required payments of taxes, insurance and interest on the mortgaged indebtedness; and (f) the relief afforded was not only temporary and conditional, but might be adapted by the Court to the particular case before it and to any change in circumstances. No single one of those legislative virtues can be claimed for the Act at bar.

Although we are not here concerned with the "contract" clause of the Constitution, but only with the "due process" clause of the Fifth Amendment, the test of reasonableness is practically the same under the "contract" clause and under the "due process" clause of the Fifth and Fourteenth

Amendments. (*Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Holding Company* v. *Feldman*, 256 U. S. 170; *Levy Leasing Company* v. *Siegel*, 258 U. S. 242; *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393; *In re Bradford*, 7 F. Supp. 665.)

Section 75 and Section 75 (s) of the Bankruptcy Act do not contain a declaration of an existing emergency and the operation of the Frazier-Lemke Act is not limited to the duration of any emergency.*

Section 75 (c) limits the time for filing a petition under Section 75 [applicable also to § 75 (s)] to five years, i. e. March 3, 1938; to this period must be added the five or the six-year stay. Thus the provisions of the Act may well be operating for a good ten years unless sooner repealed or declared unconstitutional. The Act can not be regarded as "temporary" in the sense attributed to this word in prior cases advancing the "emergency doctrine". (See *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Holding Company* v. *Feldman*, 256 U. S. 170; *Levy Leasing Company* v. *Siegel*, 258 U. S. 242; *Home Building & Loan Association* v. *Blaisdell, supra; In re Bradford*, 7 F. Supp. 665.)

Nor can it be supported on the authority of *Chastelton Corp.* v. *Sinclair*, 264 U. S. 543, 547, 548, on the ground that the duration of the Act would cease with the expiration of the emergency. No power whatever is vested in any court to determine when, if ever, the emergency has passed. The

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* The emergency which motivated the decision in the *Blaisdell* case has been alleviated by that very decision. To date 29 States (see Appendix B for a summary of these laws), have enacted mortgage moratorium laws. These laws, as a whole, do not discriminate between classes of mortgagors, but grant relief to non-farmers as well as to farmers.

In addition to these state moratoria, the Federal government has passed many laws which have already lessened the distress of the farmer in general and the farmer-mortgagor in particular. W. I. Meyers, Governor of the Farm Credit Administration, stated that the activities of that agency "will obviate any extensive need for resort to the bankruptcy provisions of the Frazier-Lemke Act" (1934), 10 A. B. Rev., 364.

doctrine of the decisions in *Wilson* v. *New*, 243 U. S. 332, and in the *Rent Cases, supra*, which were declared to approach "the verge of the law" (*Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, 416), would certainly overstep even that extreme if applied to a Statute like this.

As this Court said, in holding unconstitutional the Arkansas exemption statute, "the legislation was not limited to the emergency and set up no conditions apposite to emergency relief", *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426, 432.

CONCLUSION.

The decree below should be reversed.

Respectfully submitted,

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March 27, 1935.

APPENDIX A

The Material Provisions of Section 75 of the Bankruptcy Act as Amended by the Frazier-Lemke Act.

SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS.

* * *

(c) At any time within five years after this section takes effect [March 3, 1933] a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. * * *

(r) For the purpose of this section and section 74, the term "farmer" means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur.

[THE FRAZIER-LEMKE ACT]

AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 75 of the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States", as amended, is amended as follows: In

section 75, entitled "Agricultural Compositions and Extensions", after subsection (r) add a new subsection (s), to read as follows:

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal, or if he feels aggrieved by the composition or extension, may amend his petition or answer asking to be adjudged a bankrupt. Such farmer may, at the time of the first hearing, petition the court that all of his property, whether pledged, encumbered, or unencumbered, by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of any part or parcel or all of the remainder of his property and pay for same under the terms and conditions set forth in this subsection (s).

"(1) Upon such a request being made in the petition or answer, at the time of the first hearing, appraisers shall be designated and appointed. Such appraisers shall appraise all the property of the debtor at its then fair and reasonable value, not necessarily the market value at the time of such appraisal. The appraisals shall be made in all other respects, with right of objections, exceptions, and appeal, in accordance with this Act: *Provided,* That in case of real estate either party may file objections, exceptions, and appeals within one year from date of order approving the appraisal.

"(2) After the value of the debtor's property shall have been fixed by the appraisal as herein provided, the referee shall issue an order setting aside to such debtor his exemptions as prescribed by the State law, subject to any existing mortgages or liens upon any such exemptions to an amount

equal to the value, as fixed by the appraisal, of the value of such exempt property as is covered by any mortgage or lien, and shall further order that the possession, under the control of the court, of any part or parcel or all of the remainder of the debtor's property, shall remain in the debtor subject to a general lien, as security for the payment of the value thereof to the trustee of the creditors, if a trustee is appointed, such a lien to be subject to and inferior to all prior liens, pledges, or encumbrances. Such prior liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such prior liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors holding such prior liens, pledges, or encumbrances up to the actual value of such property as fixed by the appraisal provided for herein. All liens herein on livestock shall cover all increase, and all liens on real property shall cover all rental received or crops grown thereon by the debtor, as security for the payment of any sum that may be due or past due under the terms and provisions of the next paragraph, until the full value of any such particular property has been paid.

"(3) Upon request of the debtor, and with the consent of the lien holder or lien holders, the trustee, after the order is made setting aside to the debtor his exemptions, shall agree to sell to the debtor any part, parcel, or all of the remainder of the bankrupt estate at the appraised value upon the following terms and conditions, and upon such other conditions as in the judgment of the trustee shall be fair and equitable:

"a. Payment of 1 per centum interest upon the appraised price within one year from the date of said agreement.

"b. Payment of 2½ per centum of the appraised price within two years from the date of said agreement.

"c. Payment of an additional 2½ per centum of the appraised price within three years from the date of said agreement.

"d. Payment of an additional 5 per centum of the appraised price within four years from the date of said agreement.

"e. Payment of an additional 5 per centum of the appraised price within five years from the date of said agreement.

"f. Payment of the remaining unpaid balance of the appraised price within six years from the date of said agreement.

"Interest shall be paid on the appraised price and unpaid balances of the appraised price yearly as it accrues at the rate of 1 per centum per annum and all taxes shall be paid by the debtor.

"The proceeds of such payments on the appraised price and interest shall be paid to the lien holders as their interests may appear, and to the trustee of the unsecured creditors, as their interests may appear, if a trustee is appointed.

"(4) An agreement having been reached as provided in subsection (3), the debtor may consume or dispose of any part or parcel or all of said property whether covered by the general lien to the trustee, if a trustee is appointed, or subject to pledges or prior liens or encumbrances held by secured creditors, provided he pays the appraised value of such part or parcel or all, as the case may be, to the secured creditors, as their interests may appear, and the trustee of the unsecured creditors, as his interests may appear, if a trustee is appointed, or he may put up a bond approved by

the referee in bankruptcy that he will make payments, as provided for herein, of any property so consumed or disposed of.

"(5) In case the debtor fails to make any payments, as herein provided, to any or all of the secured creditors or to the trustee of the unsecured creditors, then such secured creditors or the trustee may proceed to enforce their pledge, lien, or encumbrances in accordance with law. It shall be the duty of the secured creditors and of the trustee of the unsecured creditors to discharge all liens of record in accordance with law, whenever the debtor has paid the appraised value of any part, parcel, or all of his property as herein provided.

"(6) Having complied with the provisions of subsection (3), the debtor may apply for his discharge as provided in this Act.

"(7) If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as herein provided for, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided,*

That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: *Provided, however,* That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.

"If the debtor fails to comply with the provisions of this subection[1] the court may order the trustee to sell the property as provided in this Act."

Approved, June 28, 1934.

[1] So in original.

APPENDIX B.

Summary of State Mortgage Moratorium Laws.*

State	Statute Reference	Substance of Provision	Judicial Construction
Arizona	Chap. 29, Laws of 1933, approved and effective March 4, 1933.	(a) In pending or future real estate mortgage foreclosure suits, the court may order a two year continuance unless good cause to the contrary is shown.	
	Chap. 88, Laws of 1933, effective June 18, 1933.	(b) Plaintiff in foreclosure suit is not entitled to deficiency judgment unless he can prove that at the time the mortgage was executed the property was not of a value in excess of the amount remaining due.	
Arkansas	Laws of 1933, Act No. 21, effective February 9, 1933, as amended by H. B. 214, effective Feb. 18, 1935.	Answer in suits to foreclose mortgages, deeds of trust or pledges executed prior to January 1, 1933, shall not be due until 8 months of service of summons; in fixing date of sale and confirming sale court shall consider the condition of the debtor, economic conditions, and the fair price for the property. None of the provisions of this act shall apply to mortgages, deeds of trust or other liens executed subsequent to January, 1933, whether same secure the payment of indebtedness incurred after said last named date or prior thereto and whether such indebtedness be a renewed or extended or newly created indebtedness or otherwise. (See next column)	
	Laws of 1933, Act. No. 57, effective February 25, 1933.		*Adams v. Spillyards* (Ark. 1933) 61 S. W. (2d) 686, held unconstitutional Act No. 57, which abolished deficiency judgments by requiring that the mortgagee bid the amount of the loan plus interest and costs, or the fair value of the property if the value was more than the loan.
California	Chap. 268, Laws of 1933, effective, May 9, 1933. Chap. 1057, Laws of 1933, effective Aug. 29, 1933.	(a) Prohibits until January 1, 1934, sales under a power of sale in a mortgage or deed of trust or decree of foreclosure of real property improved with a single family dwelling, in cases	

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* Excerpt from Commerce Clearing House. Bank Law Federal Service—"L" Unit—128 C. C. H., pages 7802-7809.

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
		where default in payment of the principal only exists.	
California *(Cont.)*	Chap. 798, Laws of 1933, effective Aug. 21, 1933.	(b) Deficiency judgments after foreclosure limited to the amount by which the debt exceeds the fair market value of the property.	
	Chap. 1, Laws of 1934, effective Sept. 15, 1934.	(c) Prohibits until February 1, 1935, sales under certain mortgages and deeds of trust, except mining property and the forfeiture of vendee's interest under certain contracts of purchase, for default in payment of principal only. Permits avoidance of sale or forfeiture and postpones sales for default of installment payments due between effective date and February 1, 1935.	
Delaware	H. B. No. 5, First Spec. Sess., 1933, effective Dec. 18, 1933, expires March 1, 1935.	Execution process against real estate may be stayed for six months.	
Idaho	Chap. 150, Laws of 1933, effective March 10, 1933.	(a) Deficiency judgments in an amount greater than the difference between the debt and the reasonable value of the property forbidden.	
	Chap. 124, Laws of 1933, effective March 2, 1933.	(b) Until Dec. 31, 1934, Governor is authorized to declare legal holidays limited to certain businesses and activities for not longer than 60 days renewable for periods of 60 days.	Proclamation of Governor suspending real estate mortgage foreclosures held unconstitutional in *Alliance Trust Co. v. Hall*, U. S. Dist. Ct., Idaho, Dec. 7, 1933.
	Proclamation of Governor, July 18, 1934, effective from midnight until September 15, 1934.	Legal holidays with respect to (1) Foreclosure of mortgages upon real estate and (2) Foreclosure or cancellation of contracts for the sale of real estate. District courts and judges empowered and authorized to suspend any or all proceedings of above nature upon application of any defendant in any such action.	
Illinois	Laws of 1933, p. 649, effective May 11, 1933; expires midnight, June 30, 1935.	The Governor, or the Superintendent of Insurance with the approval of the Governor, may stay foreclosures, or extend time for the payment of	

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
Illinois (Cont.)		mortgage debts on farms or homesteads where the mortgage is owned by an insurance company.	
Iowa	(a) Acts of 1933, Chap. 179, effective March 18, 1933; expires March 1, 1935, but see (d) below. (b) Acts of 1933, Chap. 182, effective February 9, 1933; expires March 1, 1935, but see (d) below. (c) H. B. 357, First Special Session, Laws of 1933, approved March 12, 1934, and effective on publication. (d) Acts of 1935, S. B. 24, approved February 4, 1935, effective on publication; expires March 1, 1937. (e) S. B. 59, Laws of 1935, approved February 20, 1935, effective on publication; expires March 1, 1937.	(a) Redemption period extended until March 1, 1935, in foreclosure actions where redemption period has not expired. (b) In pending or future suits for the foreclosure of real estate mortgages or deeds of trust, the court may order a continuance until March 1, 1935, unless good cause to the contrary is shown. (c) None of the provisions of Chaps. 179 and 182, Laws of 1933 (see (a) and (b) above) shall apply to mortgages made on and after Jan. 1, 1934. (d) In pending or future suits for the foreclosure of real estate mortgages or deeds of trust, the court may order a continuance until March 1, 1937, unless good cause to the contrary is shown. Applications under Acts of 1933, Chap. 182, shall be considered refiled under this Act. The Act does not apply to mortgages or deeds of trust executed subsequent to January 1, 1934, nor where the real estate was acquired subsequent to such date unless continuance has been granted under Acts of 1933, Chap. 182. (e) Any actions on land contracts executed prior to January 1, 1934, wherein the vendor has retained legal title, may be suspended until March 1, 1937, unless good cause to the contrary be shown.	(a) This act is constitutional on authority of *Home Bldg. & Loan Assoc. v. Blaisdell*, 54 S. Ct. 231.—*Des Moines Joint Stock Land Bank v. Nordham*, 217 Iowa 1319, 253 N. W. 701.

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
Iowa *(Cont.)*		Within thirty days after service of notice of forfeiture, a suspension of proceedings may be obtained abating the action until March 1, 1937, unless good cause to the contrary be shown.	
Kansas	Laws of 1933, Chap. 282, effective March 20, 1933.	(a) Period of redemption extended for six months after March 4, 1933. Governor may extend the moratorium for six more months if the emergency still exists. On September 6, 1933, the Governor extended the moratorium for another six months.	This Act is unconstitutional in extending a moratorium until Sept. 4, 1933.—*Lingerfelt v. Hieronimus*, Dist. Ct., Reno County, July 19, 1933; *Phoenix Mutual Life Ins. Co. v. Miller*, Dist. Ct., Labette County, July 29, 1933; *Oakland State Bank v. Bolin et al.*, Kan. Sup. Ct., Jan. 16, 1935.
	H. B. 290, Laws of 1935, effective March 1, 1935.	(b) The period of redemption, as extended under Chap. 3, Special Session Laws of 1934, may be further extended until January 15, 1937. Prior to January 15, 1937 no deficiency judgment shall be enforced until the period of redemption as allowed by existing law or as extended by this act has expired.	The moratorium as extended by the Governor for an additional 6 months was held unconstitutional by the Wyandotte Dist. Ct., in *McDonnell v. Cannavan* on Oct. 20, 1933.
	Laws of 1933, Chap. 218, effective March 7, 1933.	(c) Court may decline to confirm a sale in foreclosure where bid is inadequate, or court may fix an upset price at which property must be bid in if sale is to be confirmed.	Act of March 2, 1934 was held unconstitutional by U. S. District Court in *Phoenix Joint Stock Land Bank of Kansas City v. Dewey et al.*, 2 F. Supp. 678.
Louisiana	Laws of 1934, Act No. 28, effective Aug. 1, 1934.	Right to deficiency judgments is abolished where creditor provokes a judicial sale without the benefit of appraisement. Applicable both to real and personal property, and only to obligations made after this Act becomes effective.	
	Laws of 1934, Act No. 159, effective Aug. 1, 1934.	Until the second Monday in May, 1936 the District Court may postpone foreclosure sales on petition of the mortgagor or owner in possession. Mortgagor may be directed to pay rental or income value of land for the payment of taxes, insurance, interest, etc. The Act applies only to	

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
Louisiana *(Cont.)*		mortgages made prior to the approval of the Act.	
	Laws of 1934, H. B. No. 2, Second Special Session, effective December 6, 1934.	Bank Commissioner constituted, ex officio, the Debt Moratorium Commissioner. Under rules and regulations prescribed and published in official journal, Commissioner may, after hearing, suspend all laws or parts of laws relative to the enforcement of any debt (as defined in the act), public or private, except as specifically exempted by the act, and all laws or parts of laws authorizing the reduction of any debt to judgment or the enforcement thereof, for such period as seems just and proper in each case, but not beyond 12 o'clock noon on the 20th day after adjournment of the regular session of the Legislature for the year 1936. The Act has no effect on suspensions under Act No. 159 and applies only to debts existing prior to the passage of the Act when not subsequently extended or renewed for a period ending subsequent to December 6, 1935.	
Michigan	Acts 1933, Pub. Act No. 88, effective June 2, 1933; expires March 1, 1935, as amended by Pub. Act No. 20, Acts, 1934, effective March 28, 1934.	(a) Pending or future actions for the foreclosure of real estate mortgages or deeds of trust or for the specific performance of land contracts may be continued until not later than March 1, 1935, upon good cause shown. Foreclosures by advertisement may be brought into court and continued. The redemptive period may be extended in mortgages already foreclosed.	(a) This act is constitutional on authority of *Home Bldg. & Loan Assoc. v. Blaisdell*, 54 S. Ct. 231.—*Russell v. Battle Creek Lumber Co.*, 252 N. W. 561. Construed in *Young v. Union Joint Stock Land Bank*, 253 N. W. 225, and in *Virginian Joint Stock Land Bank v. Hudson*, 254 N. W. 234; *Daugherty v. Reading*, 254 N. W. 189.
	Acts 1933, Pub. Act No. 229, effective July 6, 1933.	(b) Court may fix minimum price at which land is sold at foreclosure.	
Minnesota	Laws of 1933, Chap. 339, effective April 8, 1933; expires, May 1, 1935.	Court may extend the time of redemption from mortgage foreclosure sales and execution sales of real estate, the power of sale by advertise-	United States Supreme Court held this provision constitutional in *Home Bldg. & Loan Assoc. v. Blaisdell*, 54 S. Ct. 231.

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
Minnesota *(Cont.)*		ment, and the right to deficiency judgments until May 1, 1935.	In *Grace v. Lichtscheidl*, 249 N. W. 672, the Minnesota Supreme Court held that the fact that the property mortgaged was not the homestead of the mortgagors would not make the law invalid in extending the period of redemption.
Mississippi	Laws of 1934, H. B. 270, effective April 4, 1934; expires May 1, 1935.	In suits to foreclose mortgages and deeds of trust executed after March 4, 1933 the court shall fix an "upset" price and shall direct the mortgagor to pay all or a portion of the rental value of the premises to the mortgagee for a term not to exceed two years after which the property may be sold. If any mortgagee shall attempt to foreclose otherwise than as herein provided, mortgagor may enjoin such proceeding provided he shows that he has sought to refinance his mortgage through some Federal agency.	
Montana	Laws of 1933, Chap. 116, effective, March 14, 1933. Laws of 1935, H. B. 16, effective February 6, 1935.	(a) In pending or future mortgage foreclosure actions, the court may stay proceedings for a period not to extend beyond March 1, 1935. (b) In actions for foreclosure of mortgages for balance of purchase price of real property, deficiency judgments are abolished.	
Nebraska	Laws of 1935, H. B. 1, effective February 27, 1935, amending and repealing Sections 20-21,159 and 20-21,161, C. S. Supp. 1933; expires midnight, March 1, 1937. Laws of 1933, H. B. 10, effective April 26, 1933. (Sec. 20-2141, C. S. Supp. Neb.)	(a) In pending or future actions to foreclose mortgage, deeds of trust, land sale contracts, or notes, the court may stay all further proceedings therein until March 1, 1937. (b) In actions for the foreclosure of real estate mortgages, deficiency judgments are abolished.	

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
New Hampshire	Laws of 1933, Chap. 161, effective June 15, 1933; expires within 2 years or until the Governor proclaims the emergency ended.	Sales in foreclosure actions may be suspended for a reasonable period. The redemptive period may be extended for a reasonable period.	
New Jersey	Laws of 1933, Chap. 82, effective March 29, 1933.	(See next column.)	*Vanderbilt v. Brunton Piano Co.*, 169 A. 177, held unconstitutional the provision allowing the mortgagor when sued on a deficiency judgment to raise the issue of the fair market value of the premises.
New York	Laws of 1933, Chap. 798, effective, August 26, 1933. Period of emergency extended to July 1, 1935 by Chap. 278, Laws of 1934, and further extended to July 1, 1936 by Chap. 1, Laws of 1935, effective Jan. 18, 1935.	(a) No action to foreclose a real property mortgage for default in payment of principal, no action on any loan secured thereby or any guaranty thereof may be brought until July 1, 1936. Applies also to participation mortgages and mortgage bonds. Pending actions shall be dismissed.	(a) *McCarty v. Prudence-Bonds Corp.*, 266 N. Y. S. 269, held this provision constitutional.
	Laws of 1933, Chap. 794, effective Aug. 28, 1933. Period of emergency extended until July 1, 1935 by Chap. 277, Laws of 1934, and further extended to July 1, 1936 by Chap. 2, Laws of 1935, effective Jan. 18, 1935.	(b) Deficiency judgments after foreclosure shall be based upon the fair and reasonable market value of the mortgaged premises during period of emergency which extends to July 1, 1936.	(b) *R. E. Co-op. Bldg. & L. Ass'n v. Boston Bldg. Est.*, 267 N. Y. S. 204, held this provision inapplicable to sales occurring before law became effective.
North Carolina	Laws of 1933, H. B. No. 1458, effective May 18, 1933; S. B. 135, effective Feb. 28, 1933, for two years; H. B. 1287, effective Ap. 24, 1933, and H. B. 1169, effective May 12, 1933.	(a) Court may continue foreclosure actions on mortgages and deeds of trust for one year. This power exists only for two years and only in Harnett, Lenoir, Macon, Haywood, Jackson, Cherokee, Graham and Swaine Counties.	

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
North Carolina *(Cont.)*	Laws of 1933, Chap. 26, effective Feb. 6, 1933.	(b) Deficiency judgments abolished in foreclosures and sales under powers of sale in purchase money mortgages and deeds of trust.	
	Laws of 1933, Chap. 275, effective April 18, 1933.	(c) Procedure set up to guarantee sale of property for fair price on foreclosure.	
		(See next column.)	
North Dakota	Laws of 1933, Chap. 157, effective February 21, 1933, expires at end of two years.	On March 20, 1934, the Governor issued a proclamation making it unlawful to oust an owner from his farm home lost through foreclosure without allowing the owner an opportunity to secure the benefits of federal legislation.	*State ex rel. Cleverinque v. Klein* (N. D. 1933) 249 N. W. 118, held the statute which extended the period of redemption for a period of two years unconstitutional as applied to mortgages executed prior to its passage.
	Laws of 1933, Chap. 155, effective March 7, 1933.	Courts may not grant deficiency judgments.	
	Proclamation of Acting Governor, July 25, 1934, effective until revoked.	Real or personal property of citizen residing in state can not be seized, levied upon or sold through use of force, stealth or process of law. No person can be evicted from home, place of dwelling or business for inability of debtor to pay. No foreclosure or deprivation of property or title thereto by tax, distress, levy or issuance of tax or sheriff's deed. Does not apply to obligation due to or security held by Federal Government or agency thereof. Review may be had by applying to judge of district court having jurisdiction.	
	Supplement to Debt Moratorium—Proclamation of Acting Governor, August 3, 1934.	Purpose of moratorium is to secure and preserve to debtor the possession and use of his property for a reasonable time during which the debtor may himself file petition for relief under Frazier-Lemke Act.	
		The moratorium has no application to seizure or sale by creditors of non-residents, property taken with consent of debtor or abandoned property and shall apply only to debts existing on June 29, 1934.	

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
Ohio	Regular Session, 1933, H. B. 30 amending section 11588 of the General Code, as amended by H. B. 144 (Dec. 12, 1934); repealing section 11588 of the General Code as amended by H. B. 219 (May 15, 1933), and H. B. 144 (Dec. 12, 1934); effective February 4, 1935.	Proceedings to foreclose a mortgage or enforce a specific lien may be postponed not later than April 1, 1937. This act applies only to mortgages executed prior to May 18, 1933.	
Oklahoma	Laws of 1933, Chap. 16, effective March 7, 1933; expires at end of two years.	(a) In pending or future actions for foreclosure of mortgages or other liens upon real estate defendant shall not be required to answer until the expiration of 9 months from service of summons, or if answer has been filed no trial shall be had for 9 months. (b) For two years after the approval of the Act, the court is vested with discretion of granting a continuance.	(a) The Act is unconstitutional as it affects actions pending at its effective date.—*State ex rel. Osage County Savings & Loan Assn. v. Worten*, 29 P. (2d) 1. (b) The Act is constitutional insofar as it allows judicial discretion in the granting of continuances; but it is unconstitutional in an arbitrary and capricious extension of time for 9 months in all cases.—*State ex rel. Roth v. Waterfield*, 29 P. (2d) 24. Rehearing denied, 29 P. (2d) 24.
Oregon	Regular Session, 1933, H. J. Res. 18, effective March 2, 1933.	Legislature by a Joint Resolution advises courts of equity not to decree foreclosure where the mortgagor is making a bona fide effort to pay.	
Pennsylvania	P. L. 827, Act of May 18, 1933, effective May 18, 1933, to continue in force until March 31, 1935. Act No. 59, Laws of 1933, effective Jan. 17, 1934, to continue in force until July 1, 1935.	(a) Court of common pleas shall have power to stay writs of execution for the sale of dwellings or farms to prevent serious inequity. (b) Procedure to determine fair value of property sold at foreclosure set up.	

Summary of State Mortgage Moratorium Laws *(Continued)*.

State	Statute Reference	Substance of Provision	Judicial Construction
South Carolina	Laws of 1933, S. B. 174, effective May 2, 1933.	(a) Deficiency judgment of court shall be based on the true value of the property as found by a board of appraisal.	
	Laws of 1934, S. B. 1078, effective March 2, 1934, expires after two years.	(b) Courts are empowered to stay foreclosure suits. Board of conciliation appointed to effect settlements in mortgage cases.	
South Dakota	Laws of 1933, Chap. 185, effective March 11, 1933.	(a) Foreclosures by advertisement suspended when requested by mortgagor.	(a) *State ex rel. Northwestern Mutual Ins. Co. v. Circuit Ct.*, 249 N. W. 631, held this provision valid.
	Laws of 1933, Chap. 187, effective June 2, 1933.	(b) Redemption period extended additional year on condition that the mortgagor pay taxes, back interest and costs.	
	Laws of 1933, Chap. 128, effective May 28, 1935, as amended by Laws of 1935, H. B. 109, effective February 27, 1935.	(c) Deficiency judgments abolished in foreclosure of purchase money mortgages.	
	Laws of 1935, H. B. 20, effective March 2, 1935.	(d) The mortgagor may file a petition with the Circuit Court prior to the expiration of the normal redemption period, and secure an extension of such period to not later than March 1, 1937. The Act does not apply to mortgages held by the State, the United States, or agency, to obligations guaranteed by the United States, or to mortgages held as security for a public debt or deposit.	
Texas	Laws of 1933, Chap. 102, effective May 1, 1933; expires after 200 days.	(a) Court may grant stays of proceedings in suits for the recovery of real property or foreclosure of liens or mortgages on real property filed within 180 days from the effective date of the Act or pending when the Act becomes effective. The extension shall last for 180 days, but the court may upon further application at the end of the first extension period, but not after 200 days from the effective date of the Act, grant further extensions but not beyond May 1, 1934.	(a) The Act is unconstitutional in that it impairs the obligation of contracts executed before its effective date.—*Life Ins. Co. of Va. v. Sanders*, (Tex. Ct. of Civil App., El Paso Div. 62 S. W. (2d) 348. The Act is constitutional in extending the time for the sale of land under a deed of trust.—*Lingo Lumber Co. v. Hayes*, 64 S. W. (2d) 835.

Summary of State Mortgage Moratorium Laws *(Concluded)*.

State	Statute Reference	Substance of Provision	Judicial Construction
Texas (Cont.)	S. B. No. 8, Second Spec. Sess., 1934, effective Feb. 28, 1934, expires Feb. 1, 1935.	(b) Court may grant continuances and stays of execution until Feb. 1, 1935.	The Act is unconstitutional.—*Murphy* v. *Phillips*, 63 S. W. (2d) 404. Rehearing denied Oct. 4, 1933; *contra*, *Beaumont Petroleum Syndicate* v. *Brossard*, Texas Ct. of Civil App., 9th Dist., Nov. 2, 1933.
	Laws of 1933, Chap. 92, effective April 21, 1933.	(c) In suits to collect deficiency judgments rendered after foreclosures, defendant may plead as a defense that the property was sold for less than its actual value, and actual value may be shown.	(b) The "Moratorium Act" violates Sec. 16 of Art. I of the Constitution of Texas, which prohibits the enactment of laws impairing the obligation of contracts.—*Travelers Insurance Company et al.* v. *Marshall et al.*, 76 S. W. (2d) 1007. (c) The Anti-Deficiency Judgment Law violates Sec. 16, Art. I, of the Constitution, which prohibits legislation impairing the obligation of contracts.—*Langever* v. *Miller*, 76 S. W. (2d) 1026.
Vermont	Laws of 1933, No. 80, effective March 24, 1933; expires March 1, 1935, unless by joint resolution or proclamation of the Governor the emergency is considered terminated.	Court may stay execution or foreclosure sales for three months; period of redemption may be extended in discretion of the court for the benefit of parties concerned.	
Wisconsin	Laws of 1933, Chap. 11, effective February 17, 1933. Chap. 474, effective July 29, 1933.	In any farm or homestead foreclosure action commenced prior to March 1, 1935, the court may direct that no sale be made until the expiration of a reasonable period not to exceed 2 years beyond the usual one year period, but not beyond March 1, 1938. In case of an existing judgment, a similar extension may be granted.	
	Laws of 1933, Chap. 18, effective Feb. 24, 1933.	Before sales in foreclosure up until Jan. 1, 1938, court shall exercise its equitable powers and fix the value of the mortgaged premises.	

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

LOUISVILLE JOINT STOCK LAND BANK OF LOUISVILLE, KENTUCKY, - - - - - *Petitioner,*

v.

WILLIAM W. RADFORD, SENIOR, - - - *Respondent.*

ADDITIONAL BRIEF OF DEBTOR IN SUPPORT OF PETITION FOR CERTIORARI.

Another, and a controlling reason why a writ of certiorari should issue herein may be thus stated:

In re Miner, 9 Fed. Supp. 1, it was held, Lindley, J. (E. D. Ill.), that properly interpreted, the Frazier-Lemke Act only extended relief to a debtor to the extent and in the manner resulting from the cooperation of his creditor, and that accordingly, as a creditor could not complain of a result produced by his own action, it followed that the Frazier-Lemke Act, as thus interpreted, was constitutional.

So far as the instant case is concerned, such a ruling is in the interest of the debtor, for if that ruling be upheld, the Court of necessity would be called upon to affirm the decision of the District Court in this case. According to the ruling of Judge Lindley, the lienholder in the case at bar had the privilege of remaining inert, neither consent-

ing under paragraph 3 of the Frazier-Lemke Act nor objecting as hypothesized in paragraph 7 of that Act. If the lienholder in the case at bar, according to the decision of Judge Lindley, had pursued the course just described, then no question of constitutionality would have arisen in the case at bar, for in the event stated, paragraph 7 of the Act would not have become operative, and a question as to its constitutionality could not have arisen. Hence, as the lienholder in the case at bar did that which it was not required to do, that is object under paragraph 7, and thereby put that paragraph in motion, the lienholder cannot complain, as hereinbefore indicated, of the result of its own action.

But the debtor in this case is being aided in his efforts to save his farm by others interested in the interpretation and upholding of the law as a whole. The debtor in this case will not argue at this time as to the correctness or incorrectness of Judge Lindley's opinion. It is sponsored by such eminent legal authorities of the law departments of Mutual Benefit Life Insurance Company, Newark, New Jersey, Northwestern Mutual Life Insurance Company, Milwaukee, Wisconsin, New York Life Insurance Company, New York City, and Union Central Life Insurance Company, and deserves a respectful consideration.

But whether right or wrong, Judge Lindley's opinion, if generally adopted, is practically a repeal of the Frazier-Lemke Act, for so long as a recalcitrant or unwilling creditor has it in his power to prevent the law being operative, it is not likely that such creditor will consent under paragraph 3 or object under paragraph 7. If such a result is to follow, it should come promptly, and through a decision of this Court.

On the other hand, as both parties to this proceeding believe, the Lindley opinion is wrong, and that "many an

error by the same example may rush into the state," the sooner this Court overrules that opinion, the better for all concerned.

"Action is the eloquence of the occasion."

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WILLIAM W. RADFORD, SENIOR, - - - - *Respondent.*

JOINDER IN PETITION FOR CERTIORARI.

The respondent herein does respectfully join in the petition for the issuance of a writ of certiorari herein and does submit the following, in addition to the grounds urged by the petitioner herein for the issuance of such writ.

(1) The proceeding involves the constitutionality of the Frazier-Lemke Act, an amendment to National Bankruptcy Law, approved June 28, 1934. (See Record, pp. 101, *et seq.*)

The primary purpose of the law, as the appellee contends, is:

(a) To give an indebted farmer an opportunity of retaining his farm for five years on the payment of a rental to be fixed by the court, without the consent of the lienholder.

(b) To give an indebted farmer an opportunity during such rental or moratorium period, the opportunity of repurchasing his farm at the greater of two appraisements, the amount thereof to be approved by the court with regard to the amount of the secured debt or the consent of the lienholder.

The validity of the law has been upheld in this proceeding both in the District Court and in the Circuit Court of Appeals.

The law directly affects farm debts aggregating in amount over twelve billion dollars and owing by millions of farmers. The law has been declared invalid in the districts of Maryland and Eastern Virginia. The Maryland case is now under advisement (4 C. C. A.). It has been declared valid in District Courts in Arkansas, Colorado, Michigan and Oklahoma. In principle, it has been upheld in Texas, with judgment reserved as to the details thereof. The question has been reserved in Pennsylvania, as one to be decided on appeal.

The general uncertainty as to the ultimate holding of this Court has caused great confusion in the administration of the law in the District Courts. Many needy farmers are deferring applications for relief until this Court has spoken. Others are hesitating to plant crops for fear they may not reap where they have sown.

The practice of this Court has been to issue writs of certiorari in proceedings in bankruptcy.

Consult:

In re Chicago, Rock Island & Pacific Railway Company, argued and submitted at this term.
Local Loan Co. *v.* Hunt, 292 U. S. 234.
Ex parte Baldwin, 291 U. S. 610.
Cooper v. Dasher, 290 U. S. 106.

Manhattan Properties Co. v. Irving Trust Co., 291 U. S. 320.
Fidelity & Deposit Co. v. Arenz, 290 U. S. 66.
Royal Indemnity Co. v. American Bond & Mtg. Co., 289 U. S. 165.
American Surety Co. v. Maratta, 287 U. S. 513.
Gross v. Irving Trust Co., 289 U. S. 342.
Buffum v. Peter Barceloux Co., 289 U. S. 227.

A law required by the Constitution to be uniform in its geographical operation (186 U. S. 186), must necessarily be harmonized from time to time by this Court.

Again, Congress is now in session. If for any reason the Frazier-Lemke Act does not coincide with constitutional requirements, Congress may desire to treat the present agricultural emergency in some other way.

Hence the propriety of a writ of certiorari to be issued by the Court herein.

The facts hereinbefore outlined also move the respondent to join in the Motion to Advance this cause on the docket for an early hearing filed herein.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 717

IN THE MATTER OF WILLIAM W. RADFORD, SR.,
BANKRUPT.

LOUISVILLE JOINT STOCK LAND BANK,
Petitioner,

v.

WILLIAM W. RADFORD, SR.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

Preliminary Statement.

This case is brought to this Court on a writ of certiorari issued on March 4, 1935, by this Court to review the affirmance by the Circuit Court of Appeals for the Sixth Circuit of the decree of the United States District Court for the Western District of Kentucky staying the foreclosure of two certain mortgages by the petitioner upon

respondent's farm, enjoining petitioner from enforcing any lien it may have upon said lands for a period of 5 years and ordering that the respondent shall retain possession of said lands under the control of the court during a period of 5 years from the date of the order, December 1, 1934, provided that he pays to the trustee in bankruptcy $325 as a reasonable rental for the first year and the amounts to be fixed by the court as rental for each subsequent year. The proceedings below were in bankruptcy pursuant to and in accordance with the provisions of the so-called Frazier-Lemke Amendment to the Bankruptcy Law, Section 75 of the Bankruptcy Act, as amended by the Act of June 28, 1934.

Opinions Below.

The opinion of the District Court is reported at 8 Fed. Supp. 489, and the opinion of the Circuit Court of Appeals is reported at 74 Fed. (2d) 576.

Jurisdiction.

Judgment was rendered in the Circuit Court of Appeals on February 11, 1935. The petition for certiorari was filed in this Court on February 16, 1935, and granted on March 4, 1935. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Statute Involved.

This case involves the constitutionality of Section 75 of the National Bankruptcy Act of July 1, 1898, as amended by the Act of June 28, 1934, commonly known as the Frazier-Lemke Amendment. 11 U. S. C. A., Sec. 203 (s), June 28, 1934, C. [illegible], 48 Statutes, 1289.

Statement of the Case.

Respondent during all the time referred to herein was, and still is, a farmer. He was, and still is, engaged primarily in farming in Christian County within the Western District of Kentucky. During all the time herein mentioned he was, and now is, insolvent and unable to pay his debts as they mature. He is a bankrupt (R. 8-9, 12).

The petitioner is the holder of two real estate mortgages in the aggregate amount of $9,000 executed and delivered by respondent. The first mortgage was given on August 2, 1922, to secure the payment of a certain promissory note of even date therewith in the sum of $8,000, which respondent borrowed from petitioner. Payments were agreed to be made as follows: A preliminary interest payment at 6% per annum from date of note and mortgage to March 1, 1923, in the amount of $278, and thereafter 65 semi-annual payments of $238 each on September 1 and March 1, each year, and a final payment of $233.50 on March 1, 1956. Provision is made for a reasonable attorney's fee in case of foreclosure. The mortgage contains covenants binding the mortgagor to pay taxes and keep the buildings insured. The mortgage provides for foreclosure in case of default with respect to any of such payments or the performance of any of the conditions, covenants or agreements contained in the said note and mortgage. The mortgage was duly recorded (R. 15-24).

The other mortgage was executed and delivered on January 30, 1924, to secure the payment of a certain promissory note of even date therewith in the sum of $1,000, which respondent borrowed from petitioner. Payments were agreed to be made as follows: A preliminary interest payment at 6% per annum from date of note and mortgage to March 1, 1924, in the amount of $5, and thereafter 65 semi-annual payments of $35 each on September 1 and March 1,

each year, and a final payment of $29.23 on March 1, 1957. In addition to the covenants and agreements contained in the first mortgage, it provided that this mortgage "shall stand on an equality" with the first mortgage and that a default under the first mortgage shall mature this second mortgage. This mortgage also was duly recorded (R. 25-35).

Respondent made the payments due under the first note and mortgage to and including March 1, 1932—a period of over 10 years. He defaulted on the payments due September 1, 1932, March 1, 1933, September 1, 1933, and March 1, 1934. He did, however, on December 24, 1932, pay $9.55 to apply on interest (R. 24). He made the payments due under the second note and mortgage to and including September 1, 1932—a period of over 8 years. He defaulted on the payments due on March 1, 1933, September 1, 1933, and on March 1, 1934, of the second mortgage (R. 34-35). In addition to failing to make the payments referred to, respondent further defaulted by failing and refusing to insure the buildings on the mortgaged land against loss by fire. Thereupon petitioner procured such insurance by paying a premium of $82 therefor. Respondent also defaulted the payment of the taxes levied and assessed against said real estate for the years 1931, 1932 and 1933, which said taxes have remained delinquent and unpaid (R. 35).

On June 5, 1933, the petitioner declared the entire indebtedness evidenced by the 2 notes immediately due and payable, and on June 23, 1933, commenced a foreclosure suit in the Circuit Court of Christian County, Kentucky, to foreclose the said mortgages by reason of respondent's defaults. It claimed as of that date: (1) the sum of $7,063.43 on account of the note and mortgage of August 2, 1922, together with interest thereon at the rate of 6% per annum from March 1, 1932, until paid, less the $9.55 previously paid on interest and (2) the sum of $891.21 on account of said note and mortgage dated January 30,

1924, together with interest thereon at the rate of 6% per annum from September 1, 1932, until paid (R. 34).

On September 27, 1933, petitioner moved the Circuit Court of Christian County, in said foreclosure suit, to appoint a receiver to take charge of the mortgaged property. At that time the Conciliation Commissioner for Christian County under Section 75 of the Bankruptcy Act as amended by the Act of March 3, 1933, interposed objections to the appointment of the receiver upon the grounds that he was informed that respondent desired to avail himself of the benefits of said Section 75, as so amended, the same being the so-called Agricultural Compositions and Extensions Act. Thereupon the court declined to appoint a receiver and stayed the foreclosure suit for such time as might be necessary for respondent to proceed under said Section 75 of the Bankruptcy Act (R. 42).

Thereafter, on October 20, 1933, the petitioner made a motion for judgment in said suit upon the grounds that respondent (1) had filed no pleading or defense to the petition for foreclosure and (2) had taken no steps to avail himself of the Emergency Farm Mortgage Act of 1933. We regard the second ground as immaterial here, as did the courts below, and pass over it. Respondent appeared in opposition to the motion for judgment, stating that he still desired to commence proceedings under said Section 75. Thereupon the court refused to enter judgment (R. 42).

On October 23, 1933, the Conciliation Commissioner of Christian County filed an intervening petition praying that the court take no further action until respondent shall have proceeded under said Section 75 and the final disposition of his case in the Federal Court (R. 42-43).

Then on February 26, 1934, no proceedings having been taken by any of the parties meanwhile, respondent filed in the United States District Court for the Western District of Kentucky his petition under said Section 75 of the Bank-

ruptcy Act, as amended by the Act of March 3, 1933, for a composition and extension. This Act is the so-called Agricultural Compositions and Extensions Act. Petitioner did not consent to the proposed composition and extension. The matter was referred to the Conciliation Commissioner of Christian County. Respondent filed his inventory in the time and form required by law. He was examined at the first meeting of creditors on March 23, 1934. He failed to secure the acceptance of a majority in number and amount of all his creditors affected thereby to the proposed composition and extension (R. 43, 10).

On June 30, 1934, the Circuit Court of Christian County, Kentucky, entered judgment in favor of petitioner and against the respondent and his wife, who joined with him in the notes and mortgages, sustained the mortgages as a first lien upon respondent's farm and ordered the property sold by the Master Commissioner (R. 44).

Before the sale could be had, respondent, on August 6, 1934, filed in the United States District Court below an amended petition under the Frazier-Lemke Act, praying (1) to be adjudged a bankrupt and that the further proceedings in the matter be had under and pursuant to Subsection S of Section 75 of the National Bankruptcy Act, as amended by the Act of June 28, 1934; (2) that all his property be appraised, that his exemptions under the State law be allowed and set aside to him, and "that he be allowed to retain possession of all of the remainder of his property and pay for the same under the terms and conditions set forth in Paragraph 3 of Subsection S of Section 75 of the National Bankruptcy Act, as amended June 28, 1934"; and (3) that, if "the lienholder" (meaning petitioner) shall refuse to consent to such retention of possession, and the purchase of said property as prayed, the court shall set aside to re-

spondent his exempt property and stay all proceedings for a period of 5 years, during which respondent shall retain possession of all his property under the control of the court, provided that the respondent pay a reasonable rental, annually, as required by law, for that part of the property of which he shall have retained possession, and that at the end of the said period of 5 years, or at any time prior thereto, respondent may pay into court, in the manner provided by law, the appraised value of the property of which he retains possession and apply for his discharge as provided by law. A second amended and substituted petition for the same relief was filed by respondent on November 10, 1934 (R. 11-14).

The referee appointed appraisers (R. 68), who appraised respondent's property and fixed the fair and reasonable value of the mortgaged property at $4,445.00 (R. 69-70, 87). The petitioner in open court offered to pay $9,205.09 in cash for the mortgaged property (R. 72), which the referee stated he could not consider, and was bound to reject, because if the offer were accepted, if cash were paid, it would be immediately returned to the petitioner in satisfaction of the mortgage debt (R. 72). After the referee had refused to consider the offer, he approved the report of the appraisers, fixed the fair and reasonable value of the property at $4,445.00, and ordered that possession thereof should remain in the respondent, subject to a general lien in the trustee as security for the payment of the value of the property (R. 74). Respondent thereupon requested the trustee to sell him the mortgaged property under the terms and conditions of paragraph (3), of Subsection (s), of Section 75 (R. 76-78). Petitioner refused consent, and filed its written objections thereto (R. 78). Respondent then petitioned the court to stay all proceedings against him for five

years, and to allow him to retain possession upon a reasonable annual rental to be fixed by the court (R. 79). The petion was granted, proceedings were stayed, the petitioner was enjoined from enforcing its mortgage lien for five years, and respondent allowed to retain possession on payment of $325.00 to the trustee in bankruptcy on May 1, 1935, as rental for the first year, with rental for subsequent years to be fixed by the court (R. 80-82).

The appraisers in their report found, and the referee ordered, that respondent was not entitled to any exemption of real estate, and hence no real estate was set aside to him (R. 73). The question of exemptions, therefore, is eliminated from the case. Personal property of the value of $568.00 was allowed to respondent as an exemption by the appraisers and the order of the referee (R. 73).

In its objections filed in the District Court below, petitioner alleged, among other things, (1) that Section 75 of the Bankruptcy Act as amended by the Acts respectively approved March 3, 1933, June 7, 1934 and June 28, 1934, and each of said amendatory Acts, "constitute an invasion of the rights reserved to the States and of the rights reserved to the people by the Tenth Amendment to the Federal Constitution" (R. 47-48); (2) that each of said laws is not within the competency of Congress, because none of them are laws upon the subject of bankruptcies, and therefore each of them violates the Constitution of the United States (R. 48); (3) that each of said Acts is destructive of petitioner's business and constitutes the taking of its property in violation of the due process clause of the Fifth Amendment to the Constitution of the United States (R. 48); and (4) that each of said Acts, and the proceedings had pursuant thereto, denies the petitioner the full faith and credit due to the decree of foreclosure rendered by the

State court, and hence is unconstitutional as in violation of Article 4, Section 1 of the Constitution of the United States. Each of these objections were overruled and the decision was adverse to petitioner (R. 48).

The referee's orders were sustained by the District Court below upon a petition for review (R. 51, 52-67); and an appeal was thereupon taken to the Circuit Court of Appeals for the Sixth Circuit (R. 88-98), which affirmed the District Court (R. 100-112). To review the affirmance by the Circuit Court of Appeals, this writ of certiorari was granted.

In the Circuit Court of Appeals below, petitioner consolidated the first and second objections so as to make one point of them, which we do also in this Court. The point is that the Frazier-Lemke Amendment is not a law upon the subject of bankruptcies, and hence violates the bankruptcy clause of, and the Tenth Amendment to the Constitution of the United States. The fourth objection was abandoned, and was not referrred to in the brief or in the argument, and hence was not passed on in the opinion here for review (R. 104).

Summary of the Argument.

Point I. Section 75 of the Bankruptcy Act of July 1, 1898, as amended by the Act of June 28, 1934, is a law upon the subject of bankruptcies within the meaning of the Fourth Clause of Section 8, Article I, of the Constitution of the United States. It does not deal with matters reserved to the States, and is not in violation of the Tenth Amendment to the Constitution of the United States.

Point II. Section 75 of the Bankruptcy Act of July 1, 1898, as amended by the Act of June 28, 1934, does not deprive creditors of their property without due process of law, and therefore is not in contravention of the Fifth Amendment to the Constitution of the United States.

ARGUMENT.

Point I.

Section 75 of the Bankruptcy Act of July 1, 1898, as Amended by the Act of June 28, 1934, is a Law upon the subject of bankruptcies within the meaning of the Fourth Clause of Section 8, Article I, Constitution of the United States. It does not deal with matters reserved to the States and is not in violation of the Tenth Amendment to the Constitution of the United States.

An Analysis of the Act.

The Act in question applies only to debts existing on June 28, 1934, the date of its enactment. It may be divided into two parts. The first relates to voluntary sales and the second to an involuntary sale with a 5-year stay of foreclosure proceedings.

The provisions relative to voluntary sale require the consent of the lienholder. They provide (1) that if the bankrupt fails to obtain the necessary consent to the terms of the composition or extension, he may be adjudged a bankrupt by the filing of an amended petition; (2) that the property shall be appraised at the fair and reasonable value, not necessarily the market value of the same; and (3) that upon agreement with the lienholders, the trustee in bankruptcy must sell back to the bankrupt all or any part of his property upon the terms specified in the Act. Paragraph 3 of Subsection S of Section 75.

The provisions relative to involuntary sale provide for a stay of proceedings to foreclose any liens for a period of 5 years and that then the sale may be made to the bankrupt without the consent of the lienholder. The law provides (1) that if a secured creditor refuses to consent to such sale, proceedings to enforce liens shall be stayed for a period of 5 years; (2) that the farmer shall retain possession of the property during the 5-year stay, under the control of the court, provided he pays a reasonable rental therefor; and (3) that at the end of, or at any time within, said 5-year period the farmer may obtain full possession and title by paying into court either its original appraised value, or in the case of mortgaged real estate, a reappraised price at the option of the lienholder. The Act provides that the farmer also is entitled to his discharge.

In cases in which lienholders consent to the sale they cannot complain afterwards that the law in question is unconstitutional. In this case there has not been a sale of the farm to the bankrupt. Upon his own petition he has been granted the benefits of paragraph 7, subsection S of Section 75. This judgment, here for review, which conforms to this section, provides (1) for a stay of proceedings to enforce petitioner's mortgage for a period of 5 years; (2) that the respondent shall have and retain possession of the land in question on payment of $325 on May 1, 1935, as rental for the first year, with rental for subsequent years to be fixed by the court; and (3) that the respondent shall have a right to petition for his discharge.

A. The Power of Congress with Respect to the "Subject of Bankruptcies" Comprehends Everything in the Relations of an Insolvent Debtor and His Creditors, Extending to His and Their Relief.

It is claimed by petitioner that the law in question is not a law upon the subject of bankruptcies at all, because it

provides for a stay of proceedings, retention of possession of his property by the bankrupt and an option to purchase by the bankrupt at the end of the 5-year stay period. In this respect it is claimed that a law is not a bankruptcy law which does not dispossess the bankrupt of his property and distribute it speedily and ratably among his creditors.

Respondent contends that the law in question is comprehended within the power of Congress to legislate upon "the subject of bankruptcies." This includes the power to take the bankrupt's property and distribute it among his creditors in payment of their claims in such manner and method as seems best to Congress. The law in question (1) takes the title from the bankrupt and vests it in the trustee; (2) stays enforcement of liens for a period of 5 years; (3) provides for the retention of possession of the property by the bankrupt "under the control of the court," provided he pays a reasonable rental fixed by the court; and (4) gives the bankrupt an option to purchase during or at the end of the 5 years at the appraised value, or reappraised value, at the option of the lienholder. All these provisions relate to and are comprehended within the meaning of the subject of bankruptcies.

It is important to remember that the authorities divide themselves into two classes—those which refer to the meaning of the term in a constitutional sense and those which refer to the meaning and construction of particular statutes. It is necessary to discriminate in this respect in order to understand whether a given authority refers to the essence of the subject or some mere matter of policy contained in some particular law. In *Hanover National Bank* v. *Moyses*, 186 U. S. 181, this Court calls attention to the fact that the limitation of the English bankruptcy acts prior to the adoption of the Constitution, that only traders could take advantage of bankruptcy laws, was not to be taken as of the very nature of such laws, but as a mere

matter of policy of English law. Story, Commentaries on the Constitution, Sec. 1113, which reviews this subject, is cited in support of the text. Of the innumerable authorities to be found in the books, very few deal with the constitutional aspects of the question and most of them involve questions of construction of particular laws.

The power of Congress to legislate with respect to bankruptcies is granted by the fourth clause of Section 8 of Article I of the Constitution, which grants power "• • • to establish • • • uniform laws on the subject of bankruptcies throughout the United States." The exact extent of this power has never been defined. Powers within certain limits have been said to be comprehended within the power of Congress as well as all intermediate legislation within such limits tending to further the objects embraced within them. The language used is indicative of an intent on the part of the framers of the Constitution to grant to Congress unrestricted power with reference to bankruptcy, and this intent and meaning is also to be gathered from the history and the construction of the clause in question.

We believe that the only meaning that can be deduced from the history of the subject is that which Mr. Justice Story stated as his conclusion in the note to Section 1113 of his Commentaries on the Constitution, in which, after an exhaustive review of English, Colonial and State statutes, he says:

> "Perhaps, as satisfactory a description of a bankrupt law as can be framed is, that it is a law for the benefit and relief of creditors and their debtors, in cases in which the latter are unable or unwilling to pay their debts. And a law on the subject of bankruptcies, in the sense of the Constitution, is a law making provisions for cases of persons failing to pay their debts."

The history of the question is an account of the laws dealing with such insolvent debtors. Such laws have no settled principles and their provisions change with the changing conceptions of policy, justice and humanity. They are called bankrupt laws because they deal with bankrupt debtors. We are not at all certain whether the word "bankrupt" is of Roman or French origin. II Blackstone, 473, note says that it probably is derived from the Latin *bancus* or *banque*, denoting the table or counter of a tradesman and *ruptus*, broken, denoting one whose shop or place of trade is broken or gone—a broken trader; others, he says, think it is derived from the French *banque*—bench or table of a tradesman and route, which signifies a trace or track, and that a bankrupt is one who has removed his *banque* leaving only a trace behind. It was used in this sense in the first English Statute on Bankruptcy, 34 Henry VIII, c. 4, which uses the French expression, "those who do make bankrupt."

Thus we find laws relating to debtors containing all sorts of provisions, according to the enlightenment of the particular age. In the Old Testament we read of periodical forgiveness or discharge of debts. In Roman times the terrible laws of the twelve tables were enforced, whereby a debtor's body might be cut into pieces by his creditors, putting the debtor in chains, subjecting him to stripes and hard labor and even selling him and his wife and children into slavery, as well as other punishments. The Christian emperors introduced the law *cessio bonorum*, under which the debtor surrendered his goods to his creditors and thus escaped imprisonment and harsh corporeal punishment. Blackstone tells of this in the section cited, quoting from Justinian.

So, also, Blackstone says bankrupts were regarded and treated as criminals. He says a bankrupt formerly was defined to be "a trader, who secretes himself, or does cer-

tain other acts, tending to defraud his creditors." Bankruptcy laws were laws against bankrupts. The first English bankruptcy act, 34-35 Henry VIII, c. 4, is entitled "An Act Against Such Persons as Do Make Bankrupt." It applies only to traders. It is involuntary. Its terms are so cruel it could not have been otherwise. It provides for seizure of the debtor's body and chattels, that his property "is to be searched, viewed, rented and appraised," and "to make sale of the said lands, tenements, fees, annuities and offices, as much as the same *offender* may then lawfully give." Section VI of the act refers to "creditors of such *offender* or *offenders*." It contained no provision for a discharge, although it contained provisions whereby an honest debtor could escape imprisonment and corporeal punishment.

The Statute of Anne 1705, c. 17, was not much better. It contained many penal provisions and provided that, upon conviction, an absconding debtor "shall suffer as a felon, without the benefit of clergy." It provided for committing bankrupts to jail and dividing their goods among their creditors. In cases in which bankrupts conformed to the act an allowance of 5% "out of the neat produce of the estate" was made to them and they were granted a discharge if a majority of the creditors consented. This act was limited to traders. The act of 5 George II, c. 30, applied to traders, bankers, brokers and factors. It was not until Queen Victoria's time that a comprehensive English bankruptcy law was enacted, applicable to traders and non-traders alike, providing for voluntary and involuntary proceedings and absolute discharge of the debtor, 1869 (32 and 33 Victoria, c. 71) and 1883 (46 and 47 Victoria, c. 52).

The most that can be said of colonial legislation is that colonial laws were of varying content and nomenclature. Some provided for exemption from imprisonment by a surrender of his goods by a debtor and some few for a dis-

charge of the debtor and his goods in the sense now understood. No distinction was made between bankruptcies and insolvencies. Most of the colonial statutes applied to traders only. So the English statutes did until Queen Victoria's time. Roman and Continental European law applied to traders and non-traders alike.

Story, Commentaries on Constitution, Sec. 1111 to 1113.

XXI American Bar Association Journal (Jan. 1935), page 47.

The framers of the Constitution were familiar with English, Colonial and Roman law on the subject of bankruptcy by reason of their knowledge of Blackstone and the laws of the colonies. They knew, too, that there was no settled law or practice on the subject of bankruptcy in the separate colonies and that, like other matters of national concern, the whole matter should be dealt with by national legislation. The grant of the bankruptcy power to Congress is remedial in nature. This is apparent from the debates in the Constitutional Convention to which reference is made in *Nelson* v. *Carland*, 1 Howard 265, 269-270. That it was intended to give full, complete, unrestricted and plenary power to the Congress is apparent from the constitutional debates from which Mr. Chief Justice Fuller quotes in *Hanover National Bank* v. *Moyses*, 186 U. S. 181 at page 187. He calls attention to the fears of Mr. Sherman that bankruptcies, in some cases, were punishable with death by law in England and that he did not choose to grant a power by which that could be done here. Gouverneur Morris, conceding this, rejoined that bankruptcy is an "*extensive* and delicate subject." He would agree to it, because he did not fear the abuse of such a power by Congress. Furthermore, the people construed the language to grant such powers because it was proposed in New York

to submit an amendment to limit the grant to traders and permit the States to pass laws for the relief of insolvent debtors. This amendment, of course, was defeated.

The power of Congress to legislate on bankruptcy is unlimited, unrestricted, complete and plenary in all matters that relate to insolvent, non-paying and fraudulent debtors and their creditors, extending to the relief of both, subject only to the limitation that legislation be confined to the subject matter of bankruptcy and is not "so grossly unreasonable as to be incompatible with fundamental law." *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 192.

This Court at an early date, February, 1819, had occasion to consider the scope of the granted powers of Congress with respect to bankruptcy in the great case of *Sturges* v. *Crowninshield*, 4 Wheat. 122. This case was brought in the United States Circuit Court for Massachusetts. Plaintiff sued upon two promissory notes and the defense was a discharge under the act of the State of New York "for the benefit of insolvent debtors and their creditors," which provided for the liberation and absolute discharge of the debtor on surrendering his goods in the manner provided for in the act. It was claimed that the New York law was unconstitutional because (1) it was a bankruptcy law and that Congress alone had the power to legislate on that subject and (2) it impaired the obligation of contracts. It was held that inasmuch as Congress had repealed the National Bankruptcy Act, the State's power to act was revived, but that the law in question impaired the obligation of contracts and was unconstitutional upon that ground. Mr. Chief Justice Marshall said, "That the power [that is to legislate on the subject of bankruptcies] is both unlimited and supreme, is not questioned." (P. 191.) It was contended that Congress alone has the power to legislate with respect to the subject of bankruptcy; because the subject matter is of a national nature and that such power

of legislation is incompatible with State legislation upon the subject matter. He pointed out (p. 193) the futility of trying to discriminate in a constitutional sense between laws on bankruptcy and insolvency, it having been urged that laws which merely liberate the person are insolvent laws and those which discharge the contract are bankrupt laws. He says that if Congress passed a law which discharged the person of the bankrupt, without discharging the debt, he would, "feel much hesitation in saying that this was an insolvent, not a bankrupt act, and therefore unconstitutional." In short, he did not think that the powers of Congress were limited by such distinctions in the light of the history of the subject. He went a step further. He pointed out a distinction always observed with reference to the matter was that insolvent laws operate at the instance of the imprisoned debtor; bankrupt laws at the instance of the creditor. Thus, if it were held that the constitutional grant of power were to be restricted by the usage and recognized distinctions of colonial legislation, a voluntary bankruptcy law would be unconstitutional. He construed the power granted to Congress to empower it to deal with the subject matter of insolvent debtors in a comprehensive manner. He said, in answer to this proposition, "But should an act of Congress authorize a commission of bankruptcy to issue on the application of a debtor, a court would scarcely be warranted in saying that the act was unconstitutional, and the commission a nullity."

In this case it was further pointed out that the same distinction cannot be drawn between laws on bankrupcy and insolvency as between laws on bankruptcy and descents, for example. It was claimed that the power to pass laws on insolvency had been exercised by the colonies, were not comprehended within the power granted to Congress to legislate on the subject of bankruptcies and hence were reserved to the States. The Chief Justice stated that the

power granted to Congress was not so limited. He pointed out that complete power was given to Congress. He said with reference to the attempted distinction and resultant limitation on the power of Congress:

> "But all must perceive that this line must be, in a great degree arbitrary. Although the two systems have existed apart from each other, there is such a connection between them as to render it difficult to say how far they may be blended together. The bankrupt law is said to grow out of the exigencies of commerce, and to be applicable solely to traders; but it is not easy to say who must be excluded from, or may be included within, this description. *It is like every other part of the subject; one on which the legislature may exercise an extensive discretion.*"

Thus was established by this Court in the first case in which the question was discussed the complete, unrestricted and plenary power to deal with the subject of bankruptcy, as including all legislation with reference to insolvent debtors and their creditors, without any limitations growing out of the particular practices and distinction of English or colonial law, all of which were swept away by the comprehensive construction placed on the granted powers to Congress to legislate on the subject of bankruptcies.

Eighty-three years later, in 1902, an attempt was made to have the limitations thus swept away by Chief Justice Marshall in the great case of *Sturges* v. *Crowninshield* adopted as the rule of construction of the power of Congress to legislate on the subject of bankruptcies in the case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181, in which it was claimed that the Bankruptcy Act of July 1, 1898, was not within the power of Congress to enact, because it provided, among other things, that others than traders may be adjudged bankrupts and that this may be done on voluntary petition. If the power of Congress is restricted, as

it was claimed in that case, and as it is claimed here it is limited by the manner in which it has been exercised, the decision must need to have been against the power of Congress. This Court again upheld the power of Congress as including the power to legislate fully and comprehensively upon the subject of bankruptcy, without any limitations, except those of fundamental law—it reiterated the rule laid down by Chief Justice Marshall in *Sturges* v. *Crowninshield.*

The extent of the power of Congress in respect to bankruptcy was called in question in 1843, in the case of *In re Klein,* reported in a note to *Nelson* v. *Carland,* 1 Howard 265, 277. It was claimed in that case that the Bankruptcy Act of 1841 was unconstitutional, because it provided for voluntary bankruptcy upon petition of an insolvent debtor and included others than traders. It was said that under the well understood meaning of the word bankrupt in English law at the time the Constitution was adopted, it meant a proceeding brought by creditors against insolvent debtors to have their property applied in payment of their debts, and that it was never thought that debtors should have it in their power to avoid their debts by bringing a voluntary proceeding. The Court in stating the question for decision said, "If the power conferred on Congress carries with it these restrictions," the Act of 1841 was unconstitutional. It was pointed out in the opinion that it was the purpose of the grant of power to Congress to transfer the power of the several States to Congress, so as to have a uniform system of bankruptcy throughout the Nation. This power of the States, in the absence of the grant of it to Congress, was such, the Court said, that "They may frame a bankrupt law in any form they see proper; this has never been questioned so far as my knowledge extends." Laws of the same import as the Act of 1841 had been passed by the States.

In granting the power to Congress, the framers of the Constitution had in mind both debtors and creditors. At 1 Howard 279, the opinion states:

> "For the present it will only be necessary to say that one prominent reason why the power is given to Congress was to secure to the people of the United States, as one people, a uniform law, by which a debtor might be discharged from the obligation of his contracts, and his future acquisitions exempted from his previous engagements; that the rights of debtor and creditor equally entered into the mind of the framers of the Constitution. The great object was to deprive the States of the dangerous power to abolish debts."

In summation, Mr. Justice Catron, then sitting as Circuit Judge at St. Louis, Missouri, used the very much quoted language found at 1 Howard 277, 280-281:

> "In considering the question before me I have not pretended to give a definition (but purposely avoided any attempt to define) the mere word, bankruptcy. It is employed in the Constitution in the plural, and as part of an expression: 'the subject of bankruptcies.' The ideas attached to the word in this connection are numerous and complicated; they form a subject of extensive and complicated legislation; of this subject, Congress has general jurisdiction; and the true inquiry is—To what limits is that jurisdiction restricted?
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> "I hold it extends to all cases where the law causes to be distributed the property of the debtor among his creditors: this is its least limit. Its greatest is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress.
>
> "With the policy of a law, letting in all classes, others as well as traders and permitting the bankrupt

to come in voluntarily, and be discharged without the consent of his creditors, the courts have no concern; it belongs to the law-makers."

By this test the Frazier-Lemke Amendment is constitutional. It does the least—it distributes the respondent's property. It does the greatest—it discharges him from his debts. All the other provisions of the act are intermediate legislation to further these ends, and are appropriate thereto. These we shall discuss at some length *infra*.

In September, 1844, Mr. Justice Story, sitting as a Circuit Judge in the case of *Everett v. Stone*, 3 Story 446, 8 Fed. Cas. No. 4577, defined a bankrupt in a suit to set aside certain transfers of property fraudulently made in contemplation of bankruptcy as "a broken and ruined trader, according to the original signification of the term; a person whose table or counter of business is broken up, *bancus ruptus.*" The bankrupt in question was a trader. In his commentaries on the Constitution, he held that the grant of power to Congress was unlimited and unrestricted, and would include non-traders as well. Sections 1111-1113.

In 1874, the extent of the power of Congress was again considered in the case of *In re Reiman*, 7 Ben. 455, 11 N. B. R. 21, 20 Fed. Cas. No. 11673, in which it was claimed that the Act of 1874 amending the Bankruptcy Act of 1867, so as to provide for compositions, was unconstitutional as not being a law on the subject of bankruptcy. The Court reviewed the authorities and called attention not only to the grant of power relative to bankruptcies, but also to the last clause of Article I, Section 8, of the Constitution, which grants to Congress power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." The opinion was written by Mr. Justice Blatchford, then a District Judge. He said, "It

cannot be doubted that Congress, in passing laws on the subject of bankruptcies, is not restricted to laws with such scope only as the English bankrupt laws had when the Constitution was adopted." He pointed out that the authorities and practical construction sustained this view. He concluded: "The power given must, indeed, be held to be general, unlimited and unrestricted over the subject."

He defined the subject of bankruptcy as follows:

> "It is not, properly, anything less than the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief."

In holding that the composition act is constitutional, he pointed out that it is not only included within the subject of bankruptcies, but also that it is an appropriate means within the discretionary power of Congress for the execution of the express grant of power to legislate on the subject of bankruptcies.

The decision of Judge Blatchford in the case cited came on for review before Mr. Justice Hunt, sitting as a Circuit Judge, in the case of *In re Reiman,* 12 Blatch. 562, 13 N. B. R. 128, 20 Fed. Cas. No. 11675. It was claimed, on review further, that the composition law was not a bankruptcy law, because it did not require the debtor to surrender his property. Justice Hunt affirmed the decision upon substantially the grounds stated by Judge Blatchford. He said, "Whatever relates to the subject of bankruptcy is within the jurisdiction of Congress; and, to say that the law as existing at the time of the Revolution, or the adoption of the Constitution, shall furnish the rule and limitation of legislation, would take a large part of the subject out of their jurisdiction."

Then in the case of *Hanover National Bank* v. *Moyses,* 186 U. S. 181, *supra,* the question was again reviewed and

the power of Congress to legislate on the subject of bankruptcies was held to be practically without limit, and that the manner and mode of its exercise was in the discretion of Congress.

From all these authorities, the history of the subject and the practical construction placed upon the power granted to Congress to legislate on the subject of bankruptcies, it seems clear that this power comprehends everything in the relations of an insolvent debtor and his creditors, extending to his and their relief, and that the means for executing this power are in the discretion of Congress. It is a general, unlimited, unrestricted and paramount power.

B. Section 75 of the Bankruptcy Act as Amended by the Act of June 28, 1934 (the Frazier-Lemke Amendment), is in Execution of the Powers of Congress in Respect to the Subject of Bankruptcies.

1. Bankruptcy is a legal method of dealing with the problems of the depression.

Bankruptcy is a legal method of dealing with the problems of a depression. Each of the four Federal bankruptcy acts has been the product of depression. The present depression has brought problems which the Congress has thought could not be adequately dealt with under the Bankruptcy Act of July 1, 1898. That law provides primarily for liquidation of assets in the function of distribution and it has worked fairly satisfactorily, except during the present depression. Liquidation has been ruinous during the depression for both debtor and creditor, and the objects of distribution and discharge in bankruptcy have been in large measure defeated. To avoid the ruinous results of liquidation Congress enacted laws which

place their emphasis upon, and have for their purpose, extension, composition, reorganization and rehabilitation.

President Hoover in his message to Congress on February 29, 1932 (printed in Senate Document No. 65, 72d Congress, 1st Session—Strengthening of Procedure in the Judicial System) called attention to this matter. He pointed out the tremendous losses sustained under the Bankruptcy Law as it then was, and pointed out the need for changes such as were later embodied in legislation referred to in the next paragraph. Among other things, he said:

> "The present bankruptcy act is defective in that it holds out every inducement for waste of assets long after business failure has become inevitable. It permits exploitation of its own process and wasteful administration by those who are neither truly representative of the creditor nor the bankrupt."
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> * * * * * * *
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> "The bankruptcy act should be amended to provide remedial processes in voluntary proceedings under which debtors, unable to pay their debts in due course, may have the protection of the court without being adjudged bankrupt, for the purpose of composing or extending the maturity of their debts, of amortizing the payment of their debts out of future earnings, of procuring the liquidation of their property under voluntary assignment to a trustee; or, in the case of corporations, for the purpose of reorganization."

The Chief Justice of this Court referred to this matter in the report of the Judicial Conference on October 5, 1931, in which he stated that the Conference recommended to the Congress, through the Attorney General, the advisability of legislation amending the Bankruptcy Act in other respects as follows:

> "(b) Measures to encourage prompt steps toward liquidation or settlements by insolvent debtors; in mat-

ters of composition; *to obtain extensions of time for the bankrupt to pay;* relating to assignments for the benefit of creditors; to provide relief of wage earners from garnishments or attachments."

Congress has embodied its legislation in several, separate acts to deal with the special problems of those involved in such manner as seemed to it to give individual treatment to each. On March 3, 1933, Congress enacted the amendments to the Bankruptcy Act known as Sections 74, 75, 76 and 77. (11 U. S. C. A., Sec. 202-205.) Section 74 provides for composition and extension of debts of individuals; Section 75 provides for agricultural compositions and extensions; Section 76 extended the provisions of Section 75 to those secondarily liable on obligations covered by section 75 and section 77 provides for the reorganization of railroads engaged in interstate commerce. On May 24, 1934, it passed Sec. 80 (11 U. S. C. A., Sec. 303) relating to municipal debt adjustments; on June 7, 1934, Congress passed Section 77B (11 U. S. C. A., Section 207) extending bankruptcy to private corporations; and finally, on June 28, 1934, it adopted the Frazier-Lemke Bill as subdivision (s) of Section 75 (11 U. S. C. A., Sec. 203 (s)). Each of these laws was adopted as an amendment to the Bankruptcy Law of July 1, 1898; is a part of it and all are to be construed not as independent acts, but as the complete expression of Congress upon the subject of bankruptcy.

By these laws Congress seeks to adapt the great power which it possesses to legislate on the subject of bankruptcies to accomplish great public purposes. By a shift in procedure from mere liquidation, which has proved ruinous because of depression conditions, to composition, extension, reorganization and rehabilitation, attempt is made to use the great powers of distribution and discharge so

as to protect the creditor to the full value of the bankrupt's estate, to relieve debtors from the terrible burden of debt, which is aggravated and from which there seems to be no hope of timely relief by reason of the depression, and finally to discharge the debtor in a condition, financial and otherwise, to take his place in his calling of business.

The use of the power to enact laws on the subject of bankruptcies to accomplish these purposes is established by the repeated decisions of this Court. A varying importance has been attached to the respective functions of distribution and discharge depending on the subject matter being considered in the particular decision. Discharge is said to be a matter of great importance and that is of great public concern that the debtor should be discharged so he can start afresh, freed from his burden of debt and restore him to his calling and business. It is true that some few cases hold that discharge is of only minor importance. Such cases are *Wilson* v. *City Bank of St. Paul*, 17 Wall. 473, which holds that distribution is the primary and discharge the secondary purpose; *U. S.* v. *Fox*, 95 U. S. 670, which holds that distribution is the principal and discharge an incidental object, and *Pirie* v. *Chicago Title & Trust Co.*, 182 U. S. 438, which holds that equality of distribution is the principal object "so far as creditors are concerned." There are numerous cases which place about equal emphasis on distribution and discharge. These hold that the purpose of bankruptcy to convert the assets of the bankrupt into cash for distribution among creditors and then to relieve the honest debtor from his burden of debt and permit him to start afresh free of the obligations and responsibilities consequent on his business misfortunes. Comprehended in this class are such cases as *Neal* v. *Clark*, 95 U. S. 704, same volume and term as

U. S. v. *Fox, supra; Traer* v. *Clews,* 115 U. S. 528, 541; *Wetmore* v. *Markoe,* 196 U. S. 68, 77; *Burlingham* v. *Crouse,* 228 U. S. 459, 473; *Williams* v. *U. S. F. & G. Co.,* 236 U. S. 549, 554-555, and *Maynard* v. *Elliott,* 283 U. S. 273, 277.

The function of discharge has come, however, to be of increasing importance. It is of the utmost importance in times of great economic distress and emergency. The debtor should be discharged in such condition that he can resume some calling or business. By enabling the farmer to save his farm and home by the method of distribution adopted in the Frazier-Lemke Amendment, and then discharging him so he can pursue his business of farming, is for the public good and of highest public concern. Many decisions of this Court emphasize the importance of discharge favorable to resumption of vocation or business. In the case of *Hanover National Bank* v. *Moyses,* 186 U. S. 181, 192, it is said that the matter of discharge of the debtor "is a matter of public concern." In *Stellwagen* v. *Clum,* 254 U. S. 605, 617, Mr. Justice Day states that discharge is "a main purpose of the act" and "Our decisions lay great stress upon this feature of the law—as one not only of private but of great public interest, in that it secures to the unfortunate debtor, who surrenders his property for distribution, a new opportunity in life." In *Local Loan Co.* v. *Hunt,* 292 U. S. 234, the question for decision was the jurisdiction of the court of bankruptcy to entertain an ancillary suit to enjoin actions in the State courts to enforce against the bankrupt's employer assignments by the bankrupt of wages earned after adjudication which had been assigned long prior thereto as security for indebtedness discharged in the bankruptcy. At page 244, this Court says:

> "This purpose of the act has been again and again emphasized by the courts as being of public as well

as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."

Again, at page 245, it is pointed out that the wage-earner must be permitted to have the full benefit of his discharge and be relieved of this assignment, so that he may be free to receive his wages, "not only because it is a fundamental private necessity, but because it is a matter of great public concern." In point also is the very interesting case which holds the same as the *Hunt* case and is cited therein, *Hardie* v. *Swofford Brothers Dry Goods Co.* (5th C. C. A.) 165 Fed. 588, 20 L. R. A. (N. S.) 785.

Distribution and discharge are so used in the Frazier-Lemke Amendment as to secure the full benefits of bankruptcy to creditor and debtor alike. It gives the creditor everything any bankruptcy act can give him; it gives the debtor a discharge that enables him to go on with his farming. This is of private importance to him and of public importance to the nation.

2. The Frazier-Lemke Amendment is a bankruptcy measure for dealing with the debt problem of the farmer during the depression.

The Frazier-Lemke Act is a means of executing the power of Congress with respect to the subject of bankruptcies so as to deal with the problem of farmers' debts. The occasion for the enactment of the law was the pressing and urgent need for relief for the farmer and his inability to pay his debts with consequent loss of farms and homes through wholesale mortgage foreclosures. Congress possessed the power to pass the needed legislation to supple-

ment the National Bankruptcy Act of July 1, 1898, which was inadequate to the needs of the occasion. The Frazier-Lemke Amendment has adapted bankruptcy law to the problem to give needed relief. Each of these propositions shall be dealt with separately.

(a) There was need for a bankruptcy law to deal with the special probems of the farmer's debts.

(1) The economic conditions and emergency are a sufficient basis for the Act.

In considering the constitutionality and construction of laws it is always important to know the evil sought to be remedied, the claimed power of the legislature to enact it and the means used to execute this power. We are met with the challenge that the Frazier-Lemke Act is not a bankruptcy law for the reasons already stated. We answer this challenge by the claim that it is a law on bankruptcy and that the Congress has the power to enact it and that the only limitation on the power is that stated in *Hanover National Bank* v. *Moyses*, 186 U. S. 181, that a bankruptcy must not be so grossly unreasonable and arbitrary as to be incompatible with fundamental law.

The criterion is not one of unyielding rigidity or narrow conception. If the facts with which Congress was confronted or the problems were such as to justify a belief that the law in question would afford a remedy, then it cannot be said to be incompatible with fundamental law.

The emergency existing at the time of the enactment of the law, and for a long time previous thereto, is to be considered in connection with the question of the extent to which and the means by which the constitutional power to amend a law upon the subject of bankruptcy is exercised. It having been shown that the bankruptcy laws are for the benefit of creditors and debtors alike and that the Congress

has unrestricted power both as to the extent of the exercise of the power and unlimited choice as to the means to be used, it is proper, if not its bounden duty, that the Congress should have considered the actual conditions existing at the time the law was passed and under which it was to operate and which would inevitably be encountered in its administration.

Probably the conditions then existing are best portrayed and appraised by the United States Department of Agriculture in the Yearbook of Agriculture, 1933. At page 91 thereof it is pointed out that the farmer has been "specially hard hit" because costs have not fallen with prices received by farmers for their products, and that the farmer has been the victim of the depression since 1921. Farm income fell from $12,000,000,000 in 1929 to $5,000,000,000 in 1932. "Farmers received for their 1932 crop 60% less than they received for a similar crop before 1929." (Yearbook of Agriculture, 1933, page 93.) The national income fell from $91,000,000,000 in 1929 to $55,000,000,000 in 1932 (*id.*, page 93.) At page 94 thereof we find the statement that between September, 1929, and September, 1932, the average of prices received by farmers at the farm declined 58%; grain fell 69%; cotton 61%; meat animals 58%, and dairy and poultry products 51%. At wholesale markets, the average of prices of farm products declined 50%. The report points out the effect of these factors on the exchange value of farm products and in other respects. We quote pages 94 and 95 thereof:

> "Exchange Value of Farm Products Lowest in Sixty Years.—In the same period prices of non-agricultural products declined only 25 per cent and prices paid by farmers for the things they usually buy declined during this interval from 155 per cent of their pre-war average to 108 per cent, hardly enough to counteract the much greater decline in prices received. Conse-

quently, the exchange value of a unit of farm products was only 56 per cent of the pre-war level in September, 1932, compared with 91 per cent in 1929. On the same basis, a bushel of wheat exchanged for only 37 per cent as much, 100 pounds of hogs for 42 per cent, a pound of wool or a pound of cotton for about 50 per cent, a pound of butter for 72 per cent, and a dozen eggs for 88 per cent. In the case of many farm commodities the purchasing power was lower than at any time during the last 60 years.

"The ratio between prices and costs has now become disastrous. While farm-commodity prices at the beginning of 1933 had fallen until they were about half of the pre-war prices, relatively fixed farm expenses, particularly debt charges and taxes, had declined only slightly. *Farm-mortgage debt in 1932, in comparison with gross income, to say nothing of net income, was between three and four times as heavy as before the war.* Taxes had more than doubled and it took about four times as many units of farm products to pay them. Mortgage interest and taxes combined absorbed almost 25 per cent of the gross farm income in 1932, as compared with only 7 or 8 per cent before the war and 11.2 per cent in 1929.

"Effects Are of Far-reaching Nature.—The 1929-1932 general depression has thus further aggravated the farm situation, and the inability of a large percentage of farmers to meet their overhead or fixed charges has brought far-reaching results. A rapid decline in farm-land values has reduced the farmer's equity in his property and has weakened country and city lending institutions. Mounting tax delinquencies have caused large areas of land to revert to the ownership of counties and States. Thousands of farmers have reverted from ownership to tenancy. The widespread inability to pay mortgage interest and principal when due has resulted in a great increase in forced sales of farms, mortgage foreclosures, and in the voluntary release of farm land to creditors. Hundreds of thousands of farmers have been forced to a lower

standard of living in which food and shelter are the chief reward for labor and investment. The normal escape from these unremunerative conditions has been shut off by lack of employment opportunities in other occupations. In fact, the unprecedented volume of city unemployment has led to a movement of population to the country, and this movement has reduced the city demand for commercial farm products and has added inopportunely to the current difficulties of adjusting farm production to curtailed demand.

"Some of the readjustments that have already occurred tend to exert long-time influences on agriculture. The sharp reductions in farm-labor costs and in costs of certain raw materials and supplies used in production, while they have helped farmers during the period of falling receipts, indicate a much lower cost basis for agricultural production. The lower level of land values is another factor in lowering future production costs.

"Furthermore, the economic forces that have created the unusually wide gap between farm and nonagricultural prices are not readily removed. These forces include: Costs of transportation and processing that remain relatively inflexible during a period of general inflation; the inability of farmers to make drastic adjustments in output, which creates a condition of relative abundance of farm products in contrast with the sharp curtailment in industrial production, the latter tending to sustain industrial prices and at the same time to retard the domestic demand for farm products; a shift in population from cities to farms that not only reduces consumer demand but also adds to the total supply of farm products; increased agricultural production abroad which tends to maintain an abundance of agricultural products throughout the world and to reduce our export demand; and a slowing down in the rate of population growth which affects long-time domestic demand prospects, particularly for food products.—L. H. Bean, Bureau of Agricultural Economics."

The former Secretary of Agriculture, Honorable Arthur M. Hyde, discussed these economic conditions in his annual report to the President, which is published at pages 1 to 89, inclusive, of the Yearbook of Agriculture, 1933. At pages 3 to 5 thereof, inclusive, he discusses farm prices and purchasing power, gross farm income, net incomes, capital account and the problem, which the law in question seeks to deal with—namely, mortgage indebtedness. He said:

"*Gross Farm Income.*

Gross farm income from agricultural production in the United States in 1932 will be lower than it was in 1931. Gross income in 1931 was $6,955,000,000 compared with $9,403,000,000 in 1930 and $11,950,000,000 in 1929. These changes represent a decline of more than 40 per cent in two years.

"*Net Incomes.*

Net farm incomes will probably decline proportionately more than gross farm incomes this year, just as they did in 1931 and 1930, since the expenses of production have declined far less than prices of farm products. In 1930, out of a gross income of $9,406,000,000, the farmers, after paying expenses of production, interest, rent, and taxes, had $3,553,000,000 left as a return for their capital, management, and labor. In 1929 the net income for capital, labor, and management was $5,853,000,000. The average farm operator that year, after paying expenses of production, interest, rent, and taxes, had about $847 left. The average net return fell to $566 in 1930 and to $342 in 1931. Feeds, hired labor, and machinery are the principal items on which farmers in the last few years have been able to cut down their expenses. They have had little relief from interest and taxes.

"*Capital Account.*

Agriculture has also lost heavily in its capital account. The total value of all capital employed in agri-

cultural production as of January 1, 1932, was $44,339,000,000, as compared with $58,249,000,000 on January 1, 1930, a decline of about 24 per cent. Farmers' equities in their property decline along with their current incomes, so that their financial security as well as their standard of living is impaired.

"Farm real-estate values continued to fall in nearly all parts of the country. In the 12 months ended March 1, 1932, the declines exceeded those of the previous year. The department's index showing the estimated per acre value of farm land for the United States dropped from 106 per cent to 89 per cent of the pre-war (1912-1914) average. More than two-thirds of the States reported lower than pre-war levels. Only two geographic divisions, the New England and the Pacific, with indexes of 116 and 118, respectively, reported average values higher than those of the pre-war period. Average values fell 3 per cent below the pre-war level in the east and west South Central States, 4 per cent below that level in the South Atlantic and Middle Atlantic States, 18 per cent below in the Mountain States, 19 per cent below in the west North Central States, and 27 per cent below in the east North Central States.

"The current decline in farm-land values started not from a relatively high level but from a relatively low level. In that respect it differs from the first post-war slump. In large measure the decline in farm land values after 1920 liquidated a wave of speculation. The current decline reflects a writing down of values to correspond with a lower commodity price level.

"*Mortgage Debt.*

Mortgage debt presses upon American agriculture to-day with exceptional severity. Total farm-mortgage debt in the United States increased from $3,300,000,000 in 1910 to $7,900,000,000 in 1920, and to $9,500,000,000 in 1928. Since then it has fallen slightly, largely as a result of foreclosures. Interest and attendant costs on this mortgage debt in 1930 represented a fixed annual charge of $568,000,000. While

the capacity to carry this charge has declined greatly in the last two years, the charge itself remains about the same. In 1931 interest on the farm-mortgage debt absorbed about 8 per cent of the gross farm income, compared with 4 per cent in 1920 and 3 per cent in 1910. In recent years an increasing number of farms have been mortgaged. The department estimates that in 1930, 40 per cent of all farms were mortgaged. The 1930 census reported 42 per cent of all owner-operated farms as mortgaged, compared with 37.2 per cent in 1920.

"Foreclosures are all too prevalent. They are blighting the hopes of men who can get as much out of the land as anyone could. Keeping efficient farm owners on their own property and in their own homes is to the interest of both debtors and creditors. It is also to the interest of the Nation. Much mortgage indebtedness has grown burdensome from forces largely outside the farmer's control. I shall later show how Federal aid in the field of farm credit has helped. But more needs to be done. The powers of our credit institutions must be broadened and *legal restrictions relaxed so that in an emergency like the present one, efficient farmers can be given a fighting chance to hold their homes.*"

He pointed out further that taxes are about 166% higher than they were in 1914 and that the tax load is extremely onerous. He said further:

"As in the case of the mortgage-debt burden, its real weight has been doubled by falling prices since 1929. It takes more than four times as many units of farm produce to pay the farm tax bill now as it took in 1914. In 1931 taxes on farm property absorbed about 11 per cent of the gross farm income, compared with only 4 per cent before the war."

He pointed out that these conditions resulted not only in very material loss and decrease of the farmer's income,

with no substantial decrease in the costs of things purchased by farmers, increased taxes, loss of purchasing power, depreciation of the value of farm produce both in terms of money and other commodities for which they might be exchanged and a resultant inability to pay principal and interest on farm mortgages and taxes, resulting in wholesale foreclosure of mortgages, all due mostly to "forces largely outside the farmer's control"; but also that the means for refinancing farm mortgages were not then available. This last mentioned fact was due to a number of causes among which are (1) that local banks lost their lending power in large measure because of the farmer's loss of income, (2) that the life insurance companies, the chief lenders on farm-mortgage security, had to meet unprecedented demands for policy loans and depreciation in their railroad and industrial securities, and (3) Federal land banks and joint stock land banks found the bond market unsatisfactory for the sale of additional securities. These factors he discussed as follows:

"*Credit Conditions.*

It was inevitable in the generally depressed condition of agriculture that farm-credit facilities should be strained. Local credit agencies, such as country banks and merchants, depend for their lending power on a flow of income into their communities. When this flow dwindles or dries up, outstanding loans can not be collected and new loans can not be made. What ordinarily amounts to a revolving fund ceases to revolve. Farm incomes from the production of 1931 dropped so low that country banks generally could maintain only a small fraction of their lending power. These banks, moreover, had to stand the additional stress of the customary outflow of agricultural funds in mortgage interest, tax payments, and so forth.

> Agricultural distress affected the supply of mortgage credit as well as the supply of bank credit. Delinquent interest payments and a high foreclosure rate impressed mortgage lenders unfavorably. Special factors in the investment market made matters worse. Life insurance companies, the chief lenders on farm-mortgage security, had to meet an exceptional demand for policy loans; also the value of their railroad and industrial securities declined drastically. The Federal land banks and the joint-stock land banks found the bond market unsatisfactory for the sale of additional securities. The credit stringency tended still further to lessen the earning power of the farmers. It handicapped them in readjusting their crop programs. It prevented the efficient utilization of feed and of labor time. Often, indeed, lack of production credit compelled the premature selling of livestock."

He pointed out further that many Federal agencies had come to the relief of the farmer, but that they had failed to give the assistance which was needed. He pointed out that the Reconstruction Finance Corporation had appropriated $125,000,000 for Federal land banks and that the Glass-Steagall bill permitted Federal reserve banks to use the direct obligations of the United States Government as collateral for Federal reserve notes, and thus released gold for other credit purposes; that loans had been made to farmers for relief purposes and that various corporations had been set up to make loans to farmers in the emergency. All of these, however, had failed to solve the problem or to materially assist the farmer, in dealing with the problems with which he was then confronted.

In spite of all measures to alleviate conditions, they became worse. Farm prices dropped from an index value per acre of $117 in 1928 to $89 in 1932. There was practi-

cally no market for the sale of farms. The number of voluntary sales and trades of farms shrunk from 26.3 farms per 1000 in 1928 to 16.2 in 1932. During this same period the farmer's inability to pay his mortgage debt manifested itself by an increase of forced sales and related defaults from 22.8 farms per 1000 in 1928 to 41.7 farms per 1000 in 1932. The number of foreclosures practically doubled in the period between 1928 and 1932, and thus a bad condition became immeasurably worse. (Tables 469 and 470, page 733 Yearbook of Agriculture, 1933.) It is probably safe to say that at least 95% of the forced sales and foreclosures did not involve cash transactions, but were simply sales in form to liquidate mortgage indebtedness and amounted simply to a taking of the mortgaged property by mortgagees to satisfy the debts. Most of them were by insurance companies and other large lenders.

These conditions were aggravated and made worse by subsequent events. Between the spring of 1933 and the summer of 1934 (the law in question was approved on June 28, 1934) prices continued to decline, foreclosures increased in most parts of the country and some parts of the country were suffering from unprecedented crop failure due to drouth and crop destruction due to grasshoppers and other plagues. The entire region between the Mississippi River and the Rocky Mountains, including large areas east of the Mississippi River, were so afflicted.

In one of the first cases to arise under this law in August, 1934, decided November 8, 1934, we find these conditions reflected in the opinion of Judge Atwell, United States District Judge, in *Paine et al.* v. *Capitol Freehold Land & Trust Co. et al.*, 8 Fed. Supp. 500, in which he said:

> "A trial court who sits in this portion of the state, where for several successive seasons the whole face of

the earth has been blighted by drouth, is forced to view with complacency almost any effort for the relief of those who depend upon the fruit of the soil for a livelihood.' Likewise the mind of the judge must be open for the appropriate reception and careful study of any properly fathered effort for the relief of the present situation."

It was to deal with conditions of this sort largely that the Frazier-Lemke amendment to the Bankruptcy Law was passed. Two of the factors that carried most weight with the Congress were the emergency and the fact that it would take some considerable time to recover from it. The emergency caused wholesale foreclosure of mortgages on farms and homes and untold loss to our farmers. There was no market for farm lands and many lenders upon mortgage security were becoming the owners of lands. They in turn are unable to dispose of these lands because there is no market for them. To meet this situation the law in question provides that the farmer himself shall have the right and opportunity to purchase the lands at a fair value to be determined by an appraisal and to pay for the same over a reasonable period of time, which is 5 years. As a matter of practice for many years most property sold upon contract for deed requires the payments to be made in some period varying from 3 to 10 years. Most of them provide a 5-year period. The law in question has reasonable provisions adapted to the conditions with which the American farmer and all other people are confronted. (2) The Frazier-Lemke Amendment was enacted to deal with these economic conditions and this emergency. This law was passed to deal with this emergency. By its terms it applies only to debts existing as of March 3, 1934, Section 75, S (6) and

no petition for relief can be filed after March 3, 1938, Sec. 75, C.

The power of distribution of the bankrupt's estate is invoked so as to give the creditors everything to which they are entitled under the most favorable bankruptcy law. It gives them the full appraised value in money of the bankrupt's property. The law, however, effects a change in former methods of liquidation. Instead of dispossessing the farmer and selling to a stranger, provision is made for continued possession of the farmer and sale to him of his own farm at its full appraised value. The creditor has never been entitled to the property *per se*. It passed to the trustee. The creditor received his *pro rata* share of the cash derived from a sale of the property. He still receives exactly that under this law. The only difference is the sale to the farmer. Just as it was no concern of the creditor under the general bankruptcy who bought the property from the trustee, so also is it none of his concern under this law that such sale is permitted to be made to the farmer bankrupt.

Such sale to the owner, the farmer bankrupt, is a proper exercise of the bankruptcy power of distribution. It meets the needs of actual conditions. When the law was passed the nation was, and even now is, passing through the severest depression in its history. Values of all property, and particularly farm property, had not only sunk to unprecedented low levels, but there was no market for it even at these levels. There was need for any measure to conserve values, for debtor and creditor alike. Finances were not available and renewal of mortgages was almost entirely impossible. The wholesale foreclosure of mortgages failed to bring creditors the amounts due them and they bid in

properties. These properties were worth only the market price in any event and that was all the mortgagee received. It resulted, however, in wholesale loss of farms and homes, rendered the owners homeless and tended to convert our home owning farmers into mere tenants and homeless, impoverished citizens. It resulted in untold loss to the farmer as well as untold suffering. It was, therefore, wise to let the farmer have his farm and the mortgagee its appraised value.

Thus, the farmer, when he was discharged was able to continue his farm operations, and support himself and family. He is enabled to rehabilitate himself and thus not only his welfare, but the public interest also, is promoted. His status as a home owner, and as sturdy, industrious, thrifty, independent and loyal citizen is thus assured. He is thus saved from being reduced to a beggar, a mendicant, a mere homeless man in search of home and a place to rent at the mercy of his landlord and a victim of every change.

It has been the traditional policy of this nation to encourage such a class of land owning farmers. Congress disposed of the public domain with this idea in view. It enacted the homestead laws to give or sell for a nominal consideration the public lands to actual settlers. It commonly provided in land grants that the grantees would in turn sell the land to actual settlers. Such a law was construed in *Oregon & California R. R. Co.* v. *U. S.*, 238 U. S. 393. The purpose of Congress was not simply to give away the public domain. It had a great public purpose in view. It was thought that actual owners of the land upon which they lived would be the finest type of citizens, and that by making provision therefor the basis would be laid for a great and prosperous nation. It was thought these owners would be bound to the land by interest and sentiment—interest because the land is their property and

investment, increasing in value as they worked and improved it, with the thought of leaving it to their families, and sentiment, as being the place where the farmer and his family lived their entire lives, with all that this implies in love, and sentiment and affection; the home-place where his children were born, and raised and married—some even might die there. Such a class of citizens it was thought would be industrious, thrifty, virtuous and loyal citizens. It was believed also that with such a citizenry, commerce would prosper, cities spring up and a great nation built. It seems to be generally conceded that the purposes of Congress have been successful beyond the most sanguine dreams of those who so wisely planned for the settlement and building of the nation.

The emergency which we have just described threatens the whole fabric, which has been so well built. The foreclosure of the mortgage and taking the farm away from the farmer makes him just exactly the opposite of what it was intended he should be. He becomes a tenant instead of an owner, a man without a home instead of a home owner. It makes a poor peasant out of the American farmer. This results in the destruction of land values, impoverishes our people and is harmful to commerce and industry.

These conditions were noticed by this Court in *Home Building and Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, 446, and held to be a sufficient basis for the Minnesota Mortgage Moratorium law.

If the Frazier-Lemke amendment can afford a remedy in some measure for this problem its enactment is justified. Governmental power may be exerted "to safeguard the vital interests of its people." *Home Building and Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, 434-435. In the same case it was held that economic interests may justify the interposition of governmental authority, p. 437, and that reasonable means may be employed "to safeguard the

economic structure upon which the good of all depends," p. 442. All this is justified upon the grounds of public interest and the growing appreciation of public needs.

It is true that in the *Blaisdell* case the Court spoke in respect to the powers of a state government. But, Congress, within the scope of its delegated powers may legislate for the general welfare, just as the states may do under their police power.

That the Judicial Conference had in mind the power of Congress to exercise its powers with respect to the subject of bankruptcy for the public welfare is manifest from the recommendation for provisions to make the discharge in bankruptcy just and effective; to insure a thorough examination of the bankrupt, *with due regard to the public interest involved;* and to discourage fraud and waste.

In *Wilson* v. *New*, 243 U. S. 332, this Court held that the great national emergency growing out of a threatened national railway strike justified the enactment of the so-called Adamson Eight Hour Law for an 8 hour day of work for railroad employees. This case holds that Congress may take cognizance of emergency as the occasion for the exercise of powers granted to it and may use these powers to legislate for the public welfare, considering such emergency.

In *Reid* v. *Colorado*, 187 U. S. 137, it was held that Congress could prohibit the transportation of diseased cattle in interstate commerce. In the *Lottery Case*, 188 U. S. 321, this Court took notice of the evils inhering in lotteries and held that Congress could prohibit transportation of lottery tickets in inter-state commerce. In *Hipolite Egg Co.* v. *U. S.*, 220 U. S. 45, it was held that the Pure Food and Drug Act which excludes adulterated articles from the channels of inter-state commerce, is constitutional and an appropriate exercise of power in that respect. In *Caminetti* v. *U. S.*, 242 U. S. 470, it was held that the Mann Act, pro-

hibiting inter-state traffic in women for white slavery was a proper exercise of the power to regulate inter-state commerce and that the power extended to keeping such commerce free from immoral and injurious uses. So, too, importation of prize fight films in inter-state commerce has been prohibited, *Webber v. Freed*, 239 U. S. 325. The Webb-Kenyon Act regulating introduction of intoxicating liquor into dry states was sustained in *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311. In *Brooks* v. *U. S.*, 267 U. S. 432, the constitutionality of the Dyer Act prohibiting inter-state traffic in stolen automobiles was upheld. The opinion reviews the authorities. Mr. Chief Justice Taft, at p. 436, said:

> "The objection to the Act can not be sustained. Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty or the spread of any evil or harm to the people of other States from the State of origin. In doing this it is merely exercising the police power, for the benefit of the public, within the field of interstate commerce."

These authorities sustain the use of Congressional power for the public welfare. If the rule were otherwise it would be a sad commentary on our national government and proof of a lack of statesmanship on the part of the framers of the constitution, which will not be admitted.

Congress is not limited in its choice of means in exercising granted powers. It may use both necessary and convenient means and this is true even though the same may partake of other governmental authority, such as the police power. Congress is the sole judge of the means to be used.

Hoke v. *U. S.*, 227 U. S. 308.

Seven Cases v. *U. S.*, 239 U. S. 510.

It was the judgment of Congress that through bankruptcy proceedings the farmer should be given 5 years to rehabilitate himself and save his property. It seems that this was in the discretion of Congress. It seems to be fair and reasonable in view of the problem itself. Other factors confirm the judgment of Congress and justify its action. Among such factors a few may be mentioned.

Voluntary Sales.

Experience has shown that it takes at least 5 years to make payments under contracts for deeds on farms. In most instances the period of payments is nearer 10 years.

Bankruptcy.

The experience with bankruptcy administration has not been such even in normal times and under normal conditions to insure distribution in much less than 5 years. In times of emergency and economic distress it takes longer, because the problem of liquidation is more difficult and slower due to lack of buyers of bankrupt estates.

Various studies have been made of this question. In March, 1930, the so-called Donovan report was published. It was prepared by William J. Donovan, Esq., formerly Assistant Attorney General of the United States. He states that, while the tables of figures published are based on New York City Bankruptcy cases, they have been compared with similar statistics from all over the nation and are fairly representative of the country as a whole.

He pointed out that it took about 2 years to close the average no-asset cases and many 2, 3, 4 or even 6 years. (p. 198-199). An interesting table at p. 354 shows that 5 years for the closing of a bankrupt estate is not at all uncommon. During that period liquidation goes on and distribution is not finally made until the estate is closed. The table is short and is as follows:

"Periods (in days) from filing of petition to close of case.

Liquidation cases.	Average period.	Longest period.	Shortest period.
(a) No asset cases	331.3	2842 (8 yrs.)	61
(b) Nominal assets	620.3	2695 (7 yrs.)	62
(c) Gross assets under $10,000 (exclusive of (a) and (b)	697.7	3100 (8 yrs.)	107
(d) Gross assets over $10,000	1231.6	4419 (12 yrs.)	273
Average, all classes	720."		

We give these figures, as Mr. Donovan does, as facts and without criticism. Congress was undoubtedly familiar with them.

Experience with Federal receiverships in equity has demonstrated that 5 years is not uncommon for the receivership. Courts have taken notice of the fact. In the case of *In re Cope*, 8 Fed. Supp. 778, the Court said of the 5 year stay period in the Frazier-Lemke Act that it was reasonable. It cited the instance of equify receivership and said:

> "We know that in equity receiverships in the federal courts more than five years often elapse before a final sale, during which time the creditors are restrained from enforcing liens."

The statement in the case of *In re Cope* is borne out by the facts in many cases. Reference to a few will illustrate. *Levy* v. *Equitable Trust Co.*, 271 Fed. 49, *Beers* v. *Equitable Trust Co., et al.*, 286 Fed. 878, id. 883, id. 886. This is the Western Pacific receivership, commenced in 1905, terminated in 1923, was pending 18 years.

Trustees Corp., Ltd. v. *Kansas City, M. & O. R. C.*, 18 Fed. (2nd) 765 (C. C. A.). Receivership in this case was begun in 1912 and was terminated in 1925. It was pending for 13 years.

Guaranty Trust Co. of N. Y. v. *M. S. L. Ry. Co.*, 52 Fed. (2nd) 418. This receivership was begun in 1923 and is still pending. This is a period of over 12 years.

Guaranty Trust Co. of New York v. *Chicago Union Traction Co.*, 158 Fed. 913. This is a receivership of the named company and was pending for 8 years, from 1903 to 1911.

Mercantile Trust Co. v. *St. Louis & S. P. Ry. Co.*, 71 Fed. 601. This is a receivership of the named company, commonly known as the Frisco Receivership. It was pending from 1893 until 1900, a period of 7 years.

State Trust Co. v. *Kansas City P. & G. R. Co.*, 120 Fed. 398. This is a receivership of the named company on bill of foreclosure. It was pending 6 years, from 1899 to 1905.

Guaranty Trust Co. v. *Mpls. & St. L. R. Co.*, 33 Fed. (2nd) 512. In this case it is shown that the named railroad formerly was in receivership from June 28, 1888 to October 31, 1894, a period of 6 years.

American Brake Shoe and Foundry Co. v. *N. Y. Rys. Co. et al.*, 282 Fed. 523 (C. C. A. 2nd). This is a receivership of the named company and was pending for 7 years, from 1919 to 1926.

U. S. and Mexican Trust Co. v. *U. S. and Mexican Trust Co. as Trustee et al.*, 250 Fed. 337 (C. C. A. 8th). This is a receivership of the named company begun on March 7, 1912, and terminated on April 3, 1918. It was pending over 6 years.

Central Trust Co. v. *Continental Trust Co.*, 86 Fed. 517 (C. C. A. 8th). This is a receivership of Midland Railway Company. It was begun in 1894 and terminated in 1898. It was pending for 4 years.

Scott v. *Queen Annes Ry. Co.*, 162 Fed. 828. This was a receivership begun in 1904 and terminated in 1908. It was pending for 4 years.

Atchison, T. & S. F. Ry. Co. v. *Osborn*, 148 Fed. 606, which was a receivership begun in 1893 and terminated in 1895. It was pending 2 years.

Lane v. *Equitable Trust Co.*, 262 Fed. 918. This was a receivership which was begun in 1914 and terminated in 1920, a period of 6 years.

These are some examples of the time it takes to administer a receivership. True it is that a railroad receivership is much more complicated and involves a great many more transactions than the sale of a farm. But, on the other hand, experience in bankruptcy has demonstrated that it takes substantially as long to administer an estate in bankruptcy as it does in equity receivership. Under the emergency conditions that we are now confronted with, Congress had every reason to believe that bankruptcy cases would not be disposed of as quickly as in normal times, because of the difficulties involved in liquidation. In determining upon a period of 5 years as a stay, and the period during which the payments are to be made by the farmer to the trustee, it seems that Congress adopted a period that was justified and in keeping with the ordinary practice in dealing with farm lands and the experience that has been had in the administration of bankruptcies and equity receiverships. In the light of these facts it cannot be said that the action of Congress was capricious and arbitrary. It seems that the contrary must be said and that Congress acted fairly and with discrimination, and that the law is based upon actual experience as reflected in the matters to which we have called attention in this brief.

The selection of the powers in bankruptcy is within the province of Congress. Whether this policy is wise or unwise is for Congress to decide, and the Court will not set its judgment against that of Congress. There are no limits in the constitution on the exercise of this power, and the

only one that has been stated is the implied limitation that all laws enacted pursuant thereto must be compatible with fundamental law. We have shown that the Frazier-Lemke law is more than that and that it is a law that is authorized by the terms of the grant and that the remedy is justified by depression conditions and the emergency with which we are now confronted.

(b) Congress has the power to legislate from time to time on the subject of bankruptcies and has the power to pass the Frazier-Lemke Amendment.

It is quite common for those who attack the law here in question to assert that it is not a law on the subject of bankruptcies, because it does not contain those provisions which are usually found in bankruptcy laws. In support of this claim excerpts are quoted from *Wilson* v. *City Bank of St. Paul,* 17 Wall. 473, to the effect that distribution is the primary, discharge a secondary object of bankruptcy, and *U. S.* v. *Fox,* 95 U. S. 670, in which it is said that the object of bankruptcy is "to secure ratable distribution" of the bankrupt's estate among his creditors, that disbution is the principal, discharge an incidental object to be attained. In passing it is proper to note that the later cases have in effect overruled these cases in this respect. They hold that discharge of the debtor is equally important. This has been dealt with, *supra,* where we cited *Neal* v. *Clark,* 95 U. S. 704, *Traer* v. *Clews,* 115 U. S. 528, *Wetmore* v. *Markoe,* 196 U. S. 68, *Burlingham* v. *Crouse,* 228 U. S. 459, *Williams* v. *U. S. F. & G. Co.,* 236 U. S. 549, *Straton* v. *New,* 283 U. S. 318, *Stellwagen* v. *Clum,* 245 U. S. 605, and *Local Loan Co.* v. *Hunt,* 292 U. S. 234.

It is fair to assume that President Hoover in his message of February 29, 1932, must have had the foregoing authorities in mind when he said:

"A sound bankruptcy system should operate—
First, to relieve honest but unfortunate debtors of an overwhelming burden of debt;
Second, to effect a prompt and economical liquidation and distribution of insolvent estates; and
Third, to discourage fraud and needless waste of assets by withholding relief from debtors in proper cases."

It is asserted, nevertheless, that the manner in which the power has been hitherto exercised and statements found in the decisions dealing therewith, are the gauge and set the limits of the constitutional power of Congress to legislate on the subject of bankruptcies. In effect, it appears to us, that this is equivalent to saying that Congress can do only what it has done in times past. The exercise of the constitutional power of Congress is not limited by the manner in which Congress has hitherto exercised it. The power still remains in Congress and the choice of method and manner of its exercise is not exhausted or limited by its exercise in a single, particular respect. The unused powers of Congress with respect to the subject matter of sales of the bankrupt's property may be resorted to in the discretion of Congress.

The extent of the power of Congress to legislate on the subject of bankruptcies is general, unrestricted, unlimited, plenary and paramount. In *Sturges* v. *Crowninshield*, 4 Wheat, 122, 195, Mr. Chief Justice Marshall said it was "unlimited and supreme." *In re Klein*, 1 Howard 277 Mr. Justice Catron said that Congress has general juridiction and that it is a subject of extensive and complicated legislation. *In re Reiman, supra*, Mr. Justice Blatchford said the power is "general, unlimited and unrestricted over the subject." Similar expressions indicative of comprehensive and unrestricted power are to be found in *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426, 430, that it is "paramount;" in

International Shoe Co. v. *Pinkus*, 278 U. S. 261, 265, that it is "unrestricted and paramount," and in *New York* v. *Irving Trust Co.*, 288 U. S. 329, 333 that it is "supreme." The authorities abound in similar expressions.

That a power of such scope is not limited by the extent of its previous exercise and is not exhausted by a partial exercise of it would seem to be self-evident. In *Taubel etc. Co.* v. *Fox*, 264 U. S. 426, the question for decision was whether Congress had conferred on courts of bankruptcy jurisdiction to adjudicate the controverted rights of the trustee and one claiming a valid lien acquired within 4 months by proceedings in a state court. It was claimed by the trustee that the lien in question was void under Section 67, (f) and that the court of bankruptcy had jurisdiction summarily to so adjudicate, and by the lien claimant that the property was in the possession of an officer of the State court and that Congress had not conferred on bankruptcy courts the necessary jurisdiction to adjudicate this controversy. The contention of the lien claimant was sustained.

This Court pointed out that Congress has the power to confer such jurisdiction, that it has conferred jurisdiction only in part as to other matters and can confer complete jurisdiction in its discretion. At page 430, this Court said:

> "Congress has, of course, power to confer upon the bankruptcy court jurisdiction to adjudicate the rights of trustees to property adversely claimed. In matters relating to bankruptcy its power is paramount. Hence, even if the property is not within the possession of the bankruptcy court, Congress can confer upon it, as upon any other lower federal court, jurisdiction of the controversy, by conferring jurisdiction over the person in whose possession the property is."*

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* Foot-note to *In re Cope.*

By the Frazier-Lemke Amendment the Congress is exercising this power which it possesses over bankruptcies. Heretofore it has simply in effect authorized a sale in the ordinary exercise of bankruptcy jurisdiction, Sec. 2, cl. (7). Now, to legislate with respect to a special problem affecting a large class of our people it proposes to exercise this power in a particular manner to solve this problem.

That Congress had the power to pass the Frazier-Lemke amendment to deal with this situation seems to be clear from the nature and the scope of the power itself. This question was decided with respect to the Frazier-Lemke amendment in the case of *In re Cope*, 8 Fed. Supp. 778 by United States District Court, District of Colorado. After adverting to the many respects in which Congress had exercised in part its power to legislate on the subject of bankruptcies, the decision points out that the balance of the power may be exercised at the will of Congress. It said:

> "The fact that Congress has not seen fit in the past to exercise its full power under this constitutional provision does not constitute a valid objection to later amendments that may broaden the scope and effect of the bankruptcy laws."*

The holding in the *Cope* case as to the power of Congress to exercise its power over the subject matter to its full extent and to exercise it in respects in which it has not exercised it hitherto is in accord with a holding of this Court to the same effect as to the power of Congress to exercise in full the power to confer jurisdiction on bankruptcy courts, which Congress has exercised only in part, in the case of *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426.*

In the case of *In re Landquist*, 70 Fed. (2nd) 929, the same contention was made in respect to Section 74 of the Bank-

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* Foot-note to *Taubel* v. *Fox*.

ruptcy Act. It was contended that legislation which does not provide for a *pro rata* distribution of a bankrupt's property among his creditors, and for the discharge of the bankrupt from liability from his existing debts is in fact not bankrupt legislation. Considering this contention the court says:

In *Detroit Trust Co., Trustee* v. *The Thomas Barlum et al.*, 293 U. S. 23, decided November 5, 1934, this rule was applied in admiralty to uphold the Ship Mortgage Act. This Court said:

> "But it did not follow, because this view was taken of the existing law, that the Congress was without power to amend the law so as to enable the admiralty courts to take cognizance of mortgages on ships, and to regulate priorities of liens, in order to promote investment in shipping securities and thus to advance the maritime interests of the United States" (p. 47).
>
> "The authority of the Congress to enact legislation of this nature was not limited by previous decisions as to the extent of the admiralty jurisdiction. We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns. These may require that former criteria of jurisdiction be abandoned, as, for example, they were abandoned in discarding the doctrine that the admiralty jurisdiction was limited to tidewaters. *The Genesee Chief*, 12 How. 443, overruling *The Thomas Jefferson*, 10 Wheat. 428" (p. 52).

In *Schumacher* v. *Beeler* 293 U. S. 367 (decided December 17, 1934) it was held that the courts of bankruptcy have jurisdiction of suits brought by trustees in bankruptcy against adverse claimants of the bankrupt's estate, if the defendant consents to the jurisdiction. This Court, p. 374, said:

> "The Congress, by virtue of its constitutional authority over bankruptcies, could confer or withhold jurisdiction to entertain such suits and could prescribe

the conditions upon which the federal courts should have jurisdiction."

"This case is based on the illogical assumption, that the broad power of the Constitution is limited by congressional legislation on the subject of bankruptcy since the Constitution was adopted. In other words, it is argued in substance that, because Congress has heretofore provided that after adjudication there shall be a pro rata distribution of the net assets and a discharge of the debtor, further legislation cannot be classified as bankruptcy legislation unless it contains those provisions, or is in aid of them. The history of bankruptcy legislation, both in England and the United States does not support this position."

The court then traces the origin and development of various phases of the bankruptcy law and shows how the scope of the law has gradually been extended. The court points out that the Bankruptcy Act of 1867 was amended in 1874 so as to add a provision for composition. Summarizing this historical discussion the court says:

"The present body of federal law on this subject is the result of a gradual growth and development and it is obvious that the object of all of it, for more than ninety years at least, has been the benefit and relief of creditors and debtors in cases where debtors are unable to pay their debts, and the Constitution is sufficiently broad to authorize the use of any reasonable means for the accomplishment of this purpose, so long as the means are uniform in their application."

The court points out that Section 74 provides for the distribution of the debtor's estate and that the extension of time merely affects the form and substance of that distribution. The court points out further that the section tends to further the debtor's discharge from his debt, either by payment or by decree of the bankruptcy court on a *pro rata* distribution. Both of these are recognized purposes of bankruptcy legislation.

The Court refers to the futility of trying to measure the scope of the power of Congress over bankruptcy legislation by the powers heretofore exercised, saying: (p. 933).

> "Where plenary power is given by the Constitution and Congress sees fit to use only a part of it, that fact will not prevent Congress from exercising the full power whenever it chooses to do so. That principle was invoked when our composition statute was enacted as a part of the Bankruptcy Act. It was vigorously attacked for reasons the same as those assigned here or analogous to them and it was held constitutional. *In re Reiman* (D. C.), Fed. Cas. No. 11,673 and Id. (C. C.) Fed. Cas. No. 11,675."

It seems clear that Congress is not limited by previous legislation and may legislate as necessity requires. It had the power to enact the Frazier-Lemke Amendment.

(c) The Frazier-Lemke Amendment is based upon principles of bankruptcy law and is within the power of Congress.

There is really nothing new in the law in question, except perhaps the application of well settled principles of bankruptcy law in a novel way. Because it is simple, may be the reason for so much misconception. Very often it is the obvious which is not perceived.

1. *Preservation of Liens.*

Subdivision S of Section 75—preserves all valid liens. Paragraph 2 of the same provides that prior liens and encumbrances of all kinds shall remain in full force and effect. This is not unlike the provisions of Section 67 (d) of the Bankruptcy Act of July 1, 1898. The recognition of such liens is a pertinent function of bankruptcy law.

Taubel, etc. Co. v. *Fox*, 264 U. S. 426.
Straton v. *New*, 283 U. S. 318.

2. *Vesting of Title to Bankrupt's Property in Trustee.*

Subsection N of Section 75 (the Agricultural Compositions and Extensions Act, of which the Act in question is a part) provides that the filing of the petition shall subject the farmer and his property wherever found to the exclusive jurisdiction of the court with like effect upon the title of the farmer in the officers of the court as if a voluntary petition in bankruptcy had been filed. This vests the title in the trustee. It was so held in the case of *In re Duffy*, 9 Fed. Supp. 166. The Bankruptcy Act of July 1, 1898, Section 70 (a) is the same and was so construed in *Mueller v. Nugent*, 184 U. S. 1.

3. *Provision for Appraisal of the Bankrupt Estate.*

Subsection 1 provides for an appraisal of the debtor's property. It requires that "all the property of the debtor" be appraised "at its then fair and reasonable value, not necessarily the market value at the time of such appraisal." The reason for qualifying the appraisal at the fair and reasonable value by adding "not necessarily the market value at the time of such appraisal" was to include elements of value that might be omitted due to the absence of a market and to the fact that it was thought that the market price was less than the fair and reasonable value, which will be explained further, *infra*, presently.

Section 7 provides for a reappraisal at the request of the lienholder. In such case "the debtor may then pay the appraised price, if acceptable to the lienholder, into the court, otherwise the original appraisal price shall be paid into court." It is clear that this gives the lienholder an option to accept or reject the reappraisal price. With this option he can take advantage of increase in value during the 5 year stay period and cannot lose anything by decrease in value during the period. He is protected against loss in value and given the right to increases in value.

Provisions for appraisal are common in all laws in which there is to be administration upon property. Laws for the administration of estates have them. All bankruptcy laws have them.

The Bankruptcy Act of July 1, 1898, Sec. 70 b, provides for an appraisement of the estate by three disinterested appraisers who shall be appointed by and report to the court. By Section 2 of the Act bankruptcy courts are vested with full jurisdiction at law and in equity in bankruptcy proceedings. This power is ample to protect the rights of all parties. If there is an abuse of power or errors in the proceedings of the referees, trustees, appraisers or other officers of the court, a court of bankruptcy has the power to, and will upon application, correct the same. The power in equity to order and supervise sales has always been recognized.

Van Huffel v. *Harkelrode* 284 U. S. 225.

There is no claim here that the appraisal was not a fair and honest one. If it should appear that appraisers acted unfairly, fraudulently, erroneously or corruptly, the court has the inherent power to set aside the appraisal and order a new appraisal. An illegal appraisal is not an appraisal at all.

20 C. J. 1042.

Garrison v. *City of N. Y.*, 21 Wall. 196.

The act contemplates a fair and honest appraisal. The debates in Congress show that the provisions that the appraisal shall be at "the fair and reasonable value, not necessarily the market value at the time of such appraisal" was at the insistence of those opposed to the bill. The argument was that inasmuch as there was no market for farms, there was no market value, and that the fair and reasonable value, which was not necessarily the market value, was more truly representative of the real value, be-

cause it included an element of value over and above the market price and hence the valuation should not be made at only the market value.

In *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685, the statute under which certain lands were taken provided for an appraisal and assessment of damages by commissioners, making their findings final, subject to judicial review upon ground of erroneous basis of proceedings of commissioners. This Court held the statute constitutional and not a denial of due process. (p. 695). *Crane* v. *Hahlo*, 258 U. S. 142, is to the same effect. The assessment of damages and appraisal of properties by a commission, board, sheriff's jury or other non-judicial body was common in England prior to the adoption of the Constitution and satisfies all requirements of due process, especially where the matter is subject to judicial review as to the legal basis of proceedings (p. 147).

4. *The Conversion of the Bankrupt's Estate into Cash.*

All bankruptcy laws provide for conversion of the bankrupt's estate into cash and a distribution of the cash among the creditors as it may appear they are entitled. No law provides that the property as such shall be distributed or that a creditor has a right to receive the property as such. Even in cases in which he is permitted to enforce his lien in the state courts, the creditor receives the cash proceeds of the sale and not the property as such. It may be true that he sometimes bids in the property at the sale, but in such cases the bid is for cash and the property applied in payment.

Statements are taken from opinions to substantiate the claim that the creditor is entitled to the bankrupt's property. Language from *U. S.* v. *Fox*, 95 U. S. 670, is claimed to be susceptible of such a construction. We submit that what is meant is that the bankrupt's property is applied

to the payment of debts due to his creditors by administration in bankruptcy by which it is converted into cash and distributed. In all the cases it is apparent that distribution is to be in cash and not in kind. In such cases courts are but exercising the jurisdiction conferred on them "to cause the estates of bankrupts to be collected, reduced to money and distributed" under Bankruptcy Act, 1898, Section 2, (7). This section has been held to authorize the sale of the bankrupt's estate coming into the possession of the trustee. It was so held in the case of *In re Loveland*, 155 Fed. 838, 84 C. C. A. 72, 19 Am. B. R. 18.

In at least three cases this Court has held that the estate shall be reduced to cash and distributed as such. In *Burlingham* v. *Crouse*, 228 U. S. 459, in speaking upon this point, this Court said:

> "It is the twofold purpose of the Bankruptcy Act to convert the estate of the bankrupt into cash and distribute it among creditors and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched. In the light of this policy the act must be construed."

In *William* v. *U. S. F. & G. Co.*, 236 U. S. 549, at p. 554-555, substantially the same language is used and again in *Maynard* v. *Elliott*, 283 U. S. 273, at p. 277.

The law here in question provides for a sale of the bankrupt's property by the trustee. In cases in which the bankrupt consents to the sale, it is made pursuant to paragraph 3, subsection S, of Section 75. In cases in which he does not consent, the payment is made into court by the bankrupt, Par. 7 of same law. In either event, conversion of the bankrupt's property into cash takes place. The fact that the payment is made in the future or in installments does not alter the case. *In re Reiman*, 7 Ben. 455, 11 N. B. R. 21, 20 Fed. Cas. No. 11673, so holds.

This but demonstrates the error in the claim that the creditors are entitled to the bankrupt's property. They are entitled to have the property turned over to the trustee to be administered upon in bankruptcy and to receive a *pro rata* share of the cash proceeds of it. The Frazier-Lemke Amendment makes provision for such payment in the ways, which have been indicated.

5. *Transfer of Lien of Mortgage upon the Property to the Proceeds of the Property.*

The law here in question in effect transfers the petitioner's lien from the property itself to the proceeds of the property converted into cash and compels the creditor to pursue his remedy in the bankruptcy court instead of in the state court.

The power to transfer a lien from property to the cash proceeds of a sale of the property has been authoritatively determined by the decision of this Court in the case of *Van Huffel* v. *Harkelrode*, 284 U. S. 225, 78 A. L. R. 453 and note. This was an action to quiet title to land purchased by plaintiff acquired from the purchaser at a sale made by a bankruptcy court, which made an order that all liens be marshaled; that the property be sold free of all encumbrances and that the rights of all lienholders be transferred to the proceeds of the sale. Defendant is a county treasurer asserting a lien for State taxes and claims that the court was without power to order the sale and never acquired jurisdiction over the State. It was pointed out that there was no statute expressly conferring such power. This Court held that such power is possessed by courts of equity, and that the federal courts had exercised it in equity in many cases and that the courts of bankruptcy possessed jurisdiction in equity for the exercise of this power. It was held

that the bankruptcy courts have express power under Section 64 to determine the amount or legality of any tax. It then said:

> "To transfer the lien from the property to the proceeds of the sale is the exercise of a lesser power; and legislation conferring it is obviously constitutional. Realization upon the lien created by the state law must yield to the requirements of bankruptcy administration."

The judgment was for plaintiff and the rights of the State against the land held to be barred.

There is more reason for sustaining the right to transfer the lien from the property to the proceeds thereof in the instant case, because the procedure under the Frazier-Lemke Amendment requires that precise thing to be done. In *Van Huffel's* case there was no statute expressly authorizing it; and in that case this Court said, "legislation conferring it is obviously constitutional." The law in question is such legislation and is "obviously constitutional."

It has been the rule of the federal courts for many years. Form 44, 172 U. S. 709. It has been exercised in cases like *In re Franklin Brewing Co.*, 249 Fed. 333 (C. C. A. 2d), *In re Harralson*, 179 Fed. 490, 103 C. C. A. 70, 29 L. R. A. (N. S.) 737 and note, and in the numerous cases collected in the note at 78 A. L. R. 453 and the notes therein referred to.

In *First National Bank* v. *Shedd*, 121 U. S. 74, 87, cited in *Van Huffel's* case, *supra*, a decree was upheld, which ordered a certain railway sold, which was subject to two mortgages, over the objections of a minority group holding bonds secured by one mortgage as collateral who contested the priority of one of the mortgages and left the conflicting claims as to priority of liens and the amounts of bonds

issued to be settled by a subsequent decree "dividing the proceeds equitably between the two securities after a sale." In *Mellen* v. *Moline Malleable Iron Works*, 131 U. S. 352, 367, also cited in *Van Huffel's* case, *supra*, this Court held that this power of transferring a lien on property to the proceeds of a sale of the property is a subject over which courts of equity have "general jurisdiction."

Not only may the lien be transferred in equity, under general jurisdiction or when such jurisdiction is conferred by statute; but Congress has the power to confer jurisdiction upon courts of bankruptcies for the enforcement of the lien and exclude all other courts, including the state courts, from exercising any jurisdiction whatsoever in the premises. It was expressly so held in *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426, 430-431. The Frazier-Lemke Amendment confers such jurisdiction and the court below properly exercised it.

6. *Use of devise of Modified Composition*

(a) A Composition, of course, rests upon agreement of the parties. The Frazier-Lemke Amendment in Paragraph 3, Subsection S, of Section 75 provides the terms and conditions to which the lienholder may give or withhold his assent. In an ordinary composition it is true that the parties themselves make and agree upon the terms and conditions. In this case the statute makes them, by specifying payments of certain percentages of the appraised value of the property at certain times. The only matter left to agreement is the acceptance of these statutory terms after the value of property has been determined by the appraisal. It is a modified composition. It is purely voluntary and a matter of assent so far as concerns the lienholder.

Under Section 12 of the Act of 1898 the composition is based upon voluntary assent so far as concerns the majori-

ty of creditors. It is involuntary in every sense so far as it concerns the minority. They do not have the right to refuse to assent even as the lienholder has under the Frazier-Lemke Amendment and yet they are bound,—this by the will of a majority, the will of other creditors.

Wilmot v. *Mudge*, 103 U. S. 217.
Cumberland Glass Co. v. *Dewitt*, 237 U. S. 477.
Nassau Smelting, etc. Works v. *Brightwood*, 265 U. S. 269.

In so far as this matter is concerned the law in question uses an old devise of bankruptcy law to bring debtor and creditor together to save the former's property for him. Under the Act of 1898, Section 70 (f) title to the property revests in the bankrupt upon the confirmation of the composition provided for in Section 12. Under the section of the Frazier-Lemke Act (Sec. 75, Sub. S, Par. 3) he becomes an owner by purchase upon payment of the appraised value. It is the same principle as that of the Act of 1898 with the modifications mentioned.

(b) Paragraph 7, Subsection S, Section 75 provides for the relief granted in the instant case. It provides, so far as here material at this time, that the bankrupt may at any time during 5 years pay into court the appraised value of the farm and be revested with full possession and title. He is permitted to have possession under the control of the court upon terms fixed in the order.

This provision is an alternative in case the lienholder refuses his assent to a voluntary sale. First, it gives the bankrupt a right in the nature of an option to repurchase his property at any time within 5 years by payment into court of the appraisal price. Upon such payment by the bankrupt "the court shall by order turn over full possession and title of said property to the debtor." Secondly, if the bankrupt fails to comply with the provisions of sub-

section 7, "the court may order the trustee to sell the property as provided in this title." It is submitted that this meets all the requirements of distribution and discharge. It makes certain the liquidation of the estate of the bankrupt so that distribution can be made. It provides for a sale in any event for that purpose. This is the limit of the rights of the creditor in bankruptcy. The time, manner and method of distribution are legislative and must be determined by Congress.

It is contended, however, that the bankrupt is not bound to buy during the time he holds possession and that the matter of paying the appraisal price into court is purely optional with him. It is said that the Act in question confers rights and privileges on the bankrupt without imposing a corresponding liability on his part. The matter is purely legislative. In the exercise of admitted power, the legislature may confer such rights and privileges without imposing corresponding liabilities. In the *Minnesota Mortgage Moratorium* case a State statute conferred upon mortgagors a right to redeem their properties from mortgage foreclosure for 2 years, additional to the period to which they were entitled by their mortgages under existing law, without imposing a corresponding obligation or liability on mortgagors to redeem. Whether the mortgagors would redeem was purely optional during the extended period of redemption just as the right of the bankrupt to repurchase under Section 7 is purely optional with him during the stay period. While the Frazier-Lemke Amendment has other objects, it has in this respect the same object as the Minnesota Mortgage Moratorium Law, namely, to give the mortgagor a reasonable period in which to save his property by making required payments.

Home Building & Loan Ass'n. v. *Blaisdell,* 290 U. S. 398, holds that governmental power may be so exerted "to safe-

guard the vital interests of its people" (p. 434-435), when justified by economic interests (p. 437) and "to safeguard the economic structure upon which the good of all depends." (p. 442). These are the very objects, which the Frazier-Lemke Amendment has in view. These objects are accomplished by the State by the exercise of its police power, by Congress by the exercise of its powers in respect to bankruptcies. The *Blaisdell* case proceeded upon the assumption that, conceded the power to act at all, such legislation is constitutional and justified. The question in that case was whether there was any power, which the State could exercise to stay the enforcement of mortgages temporarily and thus accomplish the stated purpose. The police power of the State was relied upon as the source of power. In the instant case the power of Congress to act must be conceded because of its powers with respect to bankruptcies. Both the police power of the State and the bankruptcy power of Congress have the same quality of being general, unlimited, unrestricted and paramount within their respective fields.

Such a stay may be regarded as in aid of making a sale to the bankrupt. Options are commonly used for the purpose of aiding and facilitating sales of property. The delay incident to the stay is no different in its effect than the delay incident to extending credit; yet the latter is a recognized power in bankruptcy administration. In any event, as it has been pointed out, the property is sold. There is authority for holding that the stay in its practical effects is not unlike the credit extended in *Traer* v. *Clews*, 115 U. S. 528. It was so held in the case of *In re Cope*, 8 Fed. Supp. 778.

The petitioner cannot complain. It is the underlying principle of bankruptcy that a debtor may be discharged from his liabilities, after his property has been appropri-

ated by his creditors, without the assent of his creditors. This principle was enforced against minority and non-assenting creditors under the Act of 1898 and prior acts and the discharge, upon confirmation of the composition, was absolute as to all creditors, both assenting and not assenting to the composition. The application of the principle to a lienholder under the provisions of the law here in question is no different than the application of it to minority and non-assenting creditors in cases of composition.

In the case of *In re Reiman*, 7 Ben. 455, 11 N. B. R. 21, 20 Fed. Cas. No. 11673 two creditors with large claims refused to give their assent to a composition agreement to which the required majority had given their assent. They claimed that a composition is not comprehended within the subject of bankruptcy and that the effect of it is to enable a majority of the creditors to determine their rights without their assent. Mr. Justice Blatchford pointed out it is a fundamental principle of bankruptcy that assent of creditors to discharge is not necessary and that it is generally given over their opposition. Therefore, in compositions only the assent of a majority of the creditors is required, because it is assumed that they will act for the best interests of all. The rights and interests of the minority are protected in the proceedings for confirmation of the composition. On review of this decision, 12 Blatch. 562, 13 N. B. R. 128, 20 Fed. Cas. No. 11675, Mr. Justice Hunt, in affirming it, said that the creditors were competent to decide the matter of whether a composition is for their best interest and that their decision "is no more oppressive to the opposing creditors than if the determination had been made by the court."

In the case of *Wilmot* v. *Mudge*, 103 U. S. 217, 220 it was held that all creditors whose claims may be discharged by bankruptcy proceedings are bound by the composition

and the discharge is absolute as to their claims. The principle was reiterated and applied in *Cumberland Glass Mfg. Co.* v. *DeWitt*, 237 U. S. 447, and in *Nassau Smelting, etc. Works* v. *Brightwood*, 265 U. S. 269 it was held that the composition binds creditors with scheduled claims, although they do not prove. It was so held also in the case of *In re Mirkus*, 289 Fed. 732 (C. C. A. 2nd), 31 A. L. R. 435.

Thus it seems that the proceeding for a sale under paragraph 7 is based upon a fundamental principle in bankruptcy that a court of bankruptcy has the power to proceed without the assent of a creditor, or lienholder, and provide for the application of the bankrupt's property to the payment of his debts pursuant to law. This is what the law in question does and dispenses with the petitioner's assent to the proceedings, because its assent is not necessary.

7. The Stay of Proceedings in the State Court for a Period of Five Years.

The staying of proceedings in mortgage foreclosure is an appropriate remedy to protect the rights of the mortgagor under a constitutional statute. *Home Building & Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398.

Congress has the power to exclude the State courts from jurisdiction entirely. It was so held by this Court in *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426, 430. That case involved the jurisdiction of bankruptcy courts to determine summarily the validity of certain liens against the bankrupt's property in the hands of an officer of the State court. It was held that bankruptcy courts do not possess such power for the reason that it has not been conferred by statute. It was held that Congress can confer such jurisdiction, in the following language: "Con-

gress has, of course, the power to confer upon the bankruptcy court jurisdiction to adjudicate the rights of trustees to property adversely claimed. In matters of bankruptcy its powers are paramount."

In this case, Congress is exercising but a part of its power. It simply prohibits any proceedings in the State courts, which will interfere, or tend to interfere, with the exercise by bankruptcy courts of their jurisdiction in the premises. This, it has the power to do. *Taubel, etc. Co.* v. *Fox*, 264 U. S. 426, *supra*. In *Straton* v. *New*, 283 U. S. 318, 321 it was held that property in *custodia legis* of a State court at the time of the filing of the petition does not pass to the trustee, upon the ground that Congress had not conferred such jurisdiction on bankruptcy courts. This Court did say, however, that the jurisdiction of bankruptcy courts is "exclusive within the field defined by law." In short by enlarging the definition to include such a stay in this case, Congress has definitely acted within the scope of its powers.

In cases in which Congress has conferred exclusive jurisdiction on bankruptcy courts, that jurisdiction will be exercised by them to oust state courts. This was done in a case involving the right of the bankruptcy court to possession of property of the bankrupt in the case of *Leidigh Carriage Company* v. *Stengel*, 95 Fed. 637, decided by the Circuit Court of Appeals of the Sixth Circuit. One of the questions was whether or not the United States District Court in Bankruptcy obtained jurisdiction to administer the assets of the Bankrupt, which had been placed in the hands of a receiver appointed by the Probate Court of the State, under an assignment for the benefit of creditors. Mr. Chief Justice Taft, then a judge of the Circuit Court of Appeals of the Sixth Circuit, said:

"If this objection were to be sustained, it would seriously embarrass the enforcement of the Bankruptcy Law, and make it subordinate to the State insolvency and assignment laws, wherever an insolvent debtor who had committed an act of bankruptcy had placed his assets in the hands of the assignee acting by State Law under the direction of the Probate Court. It is generally true that, as between courts of concurrent jurisdiction, the Court which first obtains possession of the res must retain possession of it until the res has been finally disposed of, and anyone else interested in the res must apply to that Court if he desires relief with respect to the property in the possession of that Court. But, as between District Courts sitting in bankruptcy and State Courts for the administration of insolvent estates, there is no concurrent jurisdiction. The Constitution of the United States, by giving to Congress the power to pass uniform bankruptcy laws, gives to the Courts in which Congress shall vest this power paramount jurisdiction in bankruptcy proceedings."

Such a provision too is proper to enable the bankruptcy court to protect and maintain the jurisdiction conferred. Exercising the exclusive jurisdiction conferred by the Act of 1898 over property of the bankrupt which came into possession of the trustee by the filing of the petition, a trustee in bankruptcy appointed by Federal bankruptcy courts in Texas ousted the State courts of Arkansas from an attempt to maintain a mortgage foreclosure suit against the land of the bankrupt in the case of *Isaacs* v. *Hobbs, etc. Co.*, 282 U. S. 734.

These authorities are but illustrative of the power of Congress to confer exclusive jurisdiction in bankruptcy upon bankruptcy courts and of the prevention and stay of proceedings in the State courts as a necessary incident thereof to maintain and protect the jurisdiction conferred on bankruptcy courts. In this respect the law here

in question simply provides for the conferring of such jurisdiction to enable the bankruptcy courts to exercise the powers given to them.

8. *Permitting Bankrupt to Remain in Possession of His Property.*

It is permissible in bankruptcy to permit the bankrupt to remain in possession of the property. Sometimes this is done in connection with administration until it becomes necessary to assert the rights of the trustee. In the case of *In re Reiman, supra,* which was a composition, the bankrupt was permitted to remain in possession of the property throughout the proceedings. It was urged in that case that the retention of possession of the property by the bankrupt was grounds for denying confirmation of the composition. The Court said that the retention of the possession of the property by the bankrupt was not a good ground for refusing to confirm the composition. In the case of *Sparhawk* v. *Yerkes,* 142 U. S. 1, 14, the bankruptcy court declined to accept a right of the bankrupt to a seat on the New York Stock Exchange and permitted the bankrupt to retain possession of the same. Out of earnings received after discharge, he paid various assessments against the seat. An action was brought by plaintiffs, as assigneees of the trustee in bankruptcy, claiming title to the seat on the New York Stock Exchange. The Court held that the bankruptcy court had declined to accept the rights of property in the seat in the New York Stock Exchange and that the defendant was at liberty to pay off the charges against the seat and in effect purchase it the same as any other person might purchase it from the trustee himself. In the case of *In re Swofford Brothers Dry Goods Co.,* 180 Fed. 549, an arrangement was made whereby the assets of the bankrupt company re-

mained in possession of its officers pending negotiations for settlement of claims of the company against the officers and the payment of an agreed price by them for the assets of the company. In *Burlingham* v. *Crouse*, 228 U. S. 459, the bankrupt was permitted to retain possession of insurance policies upon which administration was not had.

In the cases cited the possession was permissive and without express authorization of statute. In the case at bar the statute expressly authorizes the possession "under the control of the court." It is really not the bankrupt's possession, but the court's possession. He acts merely as the agent or trustee of the court and is subject to its orders and directions. It is not a moratorium provision in the popular understanding of that expression. *In re Cope*, 8 Fed. Supp. 778, 783. The reason that parties ordinarily are not appointed receivers or trustees is that they have duties to discharge in which there is a conflict between their interests as individuals and as representatives. But, in a case where that conflict cannot arise, there is no valid reason why the party himself should not be appointed. That has sometimes been done. There is special reason for doing so where the party acts under the control and supervision of the court. 53 C. J. 71-72 (Section 78).

In the case of *Kehm* v. *Mott*, 86 Ill. A. 549 (aff. 187 Ill. 519, 58 N. E. 467), it was held that a trustee may be appointed who has no interest which will conflict with those complaining. In *Warren* v. *Stagner*, 7 Wkly NC (Pa.) 127, it was held that where it clearly appears that the party appointed will be entitled to practically the whole of the estate involved, and his integrity and capacity are unimpeached the appointment of a party as receiver is proper. And it was held in *Bartelt* v. *Smith*, 145 Wis. 31, 129 N. W. 782, that in some cases of partnership, especially those

which are small and the transactions involved comparatively simple, it is proper to appoint one of the parties to act as receiver in the dissolution proceedings.

There is a special reason why a farmer should be permitted to hold possession under the control of the court. The business which he has to transact is comparatively simple and it is an easy matter for the court to exercise control and supervision over him. Then there is the fundamental reason in connection with this law and that is after a farmer is dispossessed he is practically impoverished and destroyed and the purposes of the law will be defeated in such cases. The purposes of the law are promoted and advanced by keeping the farmer in possession, protecting the property and earning what he can to apply on taxes, rent and other charges. It is essential that his mortgage be not foreclosed in the State courts in order to preserve his status. *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398.

9. *Sale of the Bankrupt's Property to the Bankrupt.*

It is sometimes urged in this connection, as it was in the court below, that the provisions of the law in question, permitting a sale of the bankrupt's property to the bankrupt, destroys its essential principles as a bankruptcy law. This is far from the fact. The sale of the bankrupt's property to the bankrupt has been approved in many cases. In the case of *In re Reiman, supra*, the matter is referred to with approval. In the case of *Traer* v. *Clews*, 115 U. S. 528, Clews, the bankrupt, purchased from the trustee in bankruptcy all claims and demands on account of stock which Clews formerly owned in the Cedar Rapids Northwestern Construction Company and brought an action against the defendants to recover unpaid dividends due on said stock. The defense was that Clews had not been

discharged as a bankrupt at the time of the transfer; and secondly that the trustee in bankruptcy had no authority to sell the stock and its dividends to Clews. This Court held that Clews had a right to buy the property from the bankrupt which he formerly owned. At page 541, this Court said:

> "Whether Clews had been discharged at the date of the transfer to him is immaterial. After his adjudication as a bankrupt, and the surrender of his property to be administered in bankruptcy, he was just as much at liberty to purchase, if he had the means, any of the property, so surrendered, as any other person. The policy of the bankrupt act was, after taking from the bankrupt all his property not exempt by law, to discharge him from his debts and liabilities, and enable him to take a fresh start. His subsequent earnings were his own. A bankrupt might often desire, out of the proceeds of his exempted property, or out of his means earned since his bankruptcy, to purchase property which he had surrendered to the assignee. This he might do, and there is nothing in the letter or policy of the bankrupt act which forbids his doing so until after his discharge. For, having complied with the law, as it must be presumed he has, he is, after the lapse of six months, entitled, as a matter of course, to his discharge. His right to purchase property surrendered cannot, therefore, depend on his actual discharge, and, in this respect, he stands upon the same footing as any other person."

Sparhawk v. *Yerkes*, 142 U. S. 1, 14, cited *Traer* v. *Clews* and used the following language:

> "The policy of the bankrupt law was, after taking from the bankrupt all his property not exempt by law, to discharge him from his debts and liabilities and enable him to take a fresh start. Henceforward his earnings were his own, and after his adjudication and

the surrendering of his property to be administered, he was as much at liberty to purchase any of the property so surrendered as any other person. *Traer* v. *Clews*, 115 U. S. 528."

The case of *In re Cope*, 8 Fed. 778, 783, quotes *Traer* v. *Clews, supra*, and says that while the procedure under the Frazier-Lemke Act may be somewhat different than that in the language which we have quoted, fundamentally the question discussed in the quotation and involved in the Frazier-Lemke case are the same.

Upon the same principle an officer of a bankrupt corporation was permitted to purchase its assets and settle his liabilities with the corporation. It was so held in the case of *In re Swofford Brothers Dry Goods Co.*, 180 Fed. 549. This is in harmony with the rule that permits parties, plaintiffs, defendants, or otherwise, to an action, to bid at judicial and execution sales. Of course, trustees, appraisers, court officers and others who are charged with a duty with reference to the sale cannot purchase. Otherwise the right to purchase is without restriction and in some cases is encouraged as tending to promote bidding. At an early day this Court in the case of *Prevost* v. *Gratz*, 6 Wheat. 481, 513, Mr. Justice Story, writing the opinion, held that there was no reason why one of the parties to a suit could not purchase at the sale under the decree; in *Pewabic Mining Company* v. *Mason*, 145 U. S. 349, 361-362, the Special Master made a sale of the property to the compainants without leave of the court to bid at the sale. Mr. Justice Brewer held that leave was not necessary. He said that the English practice in this respect does not obtain in this country and that a sale made by a Special Master under the directions of a Court of Chancery is not a sale made by either of the parties to a litigation or under his direction. The Master is a representative of the court, as a marshal or sheriff is in an action at law. He is not under the con-

trol of either party; he is not the agent of either to make the sale. He concluded by saying: "At such public judicial sale, either party as a rule may bid." This is the rule generally in cases of sales upon execution. 23 C. J. 645 (Section 606), notes 80 and 81; *In re Morris*, 17 Fed. Cas. No. 9825, Crabbe, 70; *Kilgo* v. *Castleberry*, 38 Ga. 512, 95 Am. Dec. 407; *Town of Corinth* v. *Locke*, 62 Vt. 411, 20 Atl. 809, 11 L. R. A. 207, all sustain this rule. In *Kilgo* v. *Castleberry*, the property was bid in by one of several defendants. In answer to the claim that a party is not competent to bid at an execution sale the court after holding that a party is competent said, "Public policy would rather promote than forbid bidding."

This rule also is applied in probate sales where all parties except the representative and other officers of the court are permitted to bid. 24 C. J. 632 (Sec. 1585).

There is nothing new or strange in the provisions of the law in question authorizing a sale of the property to the bankrupt himself. It has heretofore had the express approval of this Court, even without being expressly authorized by statute. It is a right which he has and he should be encouraged in the exercise of it so that he can rehabilitate himself. It is a right that is universally recognized in parties to suits and it should not be denied to a bankrupt. The law in question avails itself of the legal principles involved in situations of this kind in accomplishment of the purposes which it has in view.

10. *Extension of Credit to the Bankrupt.*

It is commonly said that the law in question provides for a moratorium. In the case of the voluntary proceedings under this law the arrangement is one for an extension of credit. In the case of the proceedings under Section 7 the farmer or bankrupt is given 5 years within which to raise

the appraised price of the farm to pay into court to regain full possession and title. This is the equivalent of an extension of credit. This, too, has been commonly resorted to in bankruptcy cases. In the case of *In re Reiman, supra,* Mr. Justice Blatchford calls attention to the rule under the English statutes providing for the extension of credit in composition cases. In the case of *In re Reiman, supra,* credit was extended even though the statute did not authorize it and the composition was confirmed upon the grounds that a composition admits the idea of a payment of money by installments at future dates and the taking, in addition, of security that such payments shall be made. A composition for 30%, of which 10% was paid in cash and 20% in endorsed notes, was approved in the case of *In re Mirkus,* 289 Fed. 732 (C. C. A. 2d), 31 A. L. R. 435.

In the case of *Traer* v. *Clews,* 115 U. S. 528, *supra,* the point was also urged that the sale in question by the trustee in bankruptcy to Clews was invalid because it was not for cash only, but was partly for cash and balance on credit. This Court held that the matter of the terms of the sale were in the discretion of the assignee in bankruptcy, who was authorized under the statute to sell all unencumbered property which came into his hands "on such terms as he desires most for the interest of the creditors." The sale was held to be valid. The syllabus to this part of the opinion says that a trustee in bankruptcy may sell the unencumbered property of the estate on credit, when he thinks it most for the interest of the creditors. In the case of *In re Swofford Brothers Dry Goods Co.,* 180 Fed. 510, the sale in question was part cash and the balance secured by the assets purchased. This was not a composition, but was done under the direction of the bankruptcy court. It was a credit transaction.

Sales in which credit is extended in part or in whole, are often made under mortgage foreclosure. 42 C. J. 202;

Jones, Mortgages, Sec. 1615. In *Lowndes* v. *Chisolm*, 2 McCord's Ch., 455, 16 Am. Dec. 667, it was held that a sale upon mortgage foreclosure on reasonable credit is permissible. The court went on to say that the practice of selling on credit seems to be too well established to admit of any doubt and that both defendants and complainants may be considered as contracting with reference to this power of the court—a power which it is not pretended the court can exercise to an arbitrary extent any more than any other discretionary power.

In *Prudential Ins. Co. of America* v. *Lemmons*, 159 S. C. 121, 155 S. E. 591, it was held that the power to order a sale upon terms, partly cash and partly on credit to be secured, is in the sound discretion of the court and will always be exercised upon a showing made.

Probate sales are very often made upon credit. 24 C. J. 632 (Section 1585). In the case of *Reynolds* v. *Wilson*, 15 Ill. 394, 60 Am. Dec. 753, it was held that the credit may be for more than 12 months in the sound discretion of the court.

President Hoover, in his message of February 29, 1932, had in mind the extension of credit to debtors when he recommended that the Bankruptcy Law be provided so as to provide for "composing or extending the maturity of their (debtor's) debts, of amortizing the payment of their debts out of future earnings, of procuring the liquidation of their property under voluntary assignment to a trustee; or, in the case of corporations, for the purpose of reorganization." The Judicial Conference, in whose behalf the Chief Justice issued the statement from which we have quoted *supra*, had in mind the thought of liquidation and composition and expressly stated that to this end it was necessary "to obtain extensions of time for the bankrupt to pay." It seems to us that the recommendations of the

President must be entitled to great weight, because he had been advised in the premises before making his recommendation, and it seems to us that the statement of the Judicial Conference is entitled to great weight because of the character and ability of the men composing the Conference, and the certainty that any statement coming from it has had due consideration. Undoubtedly the recommendations of the President and of the Judicial Conference were made after careful study of the authorities, which fully sustain the validity of the law in question in the respects which we urge here.

From the foregoing authorities it is plain that, in sales made in judicial proceedings of different kinds, credit is often extended to a purchaser. While it is unusual, nevertheless, it is a power that is well recognized and frequently exercised. This Court has given its sanction to it in bankruptcy proceedings and has held that trustees may sell to the bankrupt after adjudication. This was done in the absence of express statute. There is no sound reason why credit should not be extended in the exercise of a sound discretion to promote and facilitate sales of property. There is special reason why credit should be allowed under the Frazier-Lemke Amendment. Prices of land are down. There is no market for land. Values are being sacrificed. Credit is a solution in part at least of this problem and enables the trustee or the court to sell to the bankrupt upon such terms that there is some possibility of his making the payments and saving his property. This is the object which the law has in view and it is proper that it should use the device of credit for the attainment of this purpose.

11. *The Provision for Revesting Full Possession and Title in the Bankrupt Upon Making His Payments in Full.*

The provision for revesting full possession and title in the farmer bankrupt after he has made his payments in

full under the Frazier-Lemke Amendment is not a new idea in bankruptcy law. It is used in connection with compositions under Sec. 12 of the Act of 1898. Sec. 70 (f) of the same Act provides that upon confirmation of the composition the title to the bankrupt's property shall revest in him.

Summary of Point I.

The Frazier-Lemke Amendment simply applies well established principles and procedures of bankruptcy law to the solution of the pressing and urgent problems of the farmer debtor. It is the application of the principles, not the principles themselves, which appears novel. In themselves they are old and the application of them seems to be new. Congress in its choice of means to execute the powers conferred on it in respect to the subject of bankruptcies had the right to select these principles and procedures to accomplish the great purpose which it had in view.

Point II.

Section 75 of the Bankruptcy Act of July 1, 1898, as amended by the Act of June 28, 1934, does not deprive creditors of their property without due process of law, and, therefore, is not in contravention of the Fifth Amendment to the Constitution of the United States.

The claim in this respect is that the creditors are entitled to the bankrupt's property and are deprived of that right by staying the proceedings in the State court by the creditor to foreclose his lien and by the sale of the property to the bankrupt. It is further claimed that the law deprives creditors of speedy and ratable distribution of the bankrupt's estate. We have shown that the matters complained of have been done in bankruptcy and equity for

many years. It has been shown that these matters are part of bankruptcy law, and that the law here in question is for that reason a law on the subject of bankruptcies. If so, then the objection stated raises the question (1) whether the 5th Amendment limits the granted power of Congress on the subject of bankruptcies, and (2) if this first question is answered in the affirmative, in what respects, if any, is the power of Congress with respect to the subject of bankruptcies limited.

A. The power of Congress to legislate on the subject of bankruptcy is not limited by the Constitution, except with respect to the requirement of uniformity.

The language of the Constitution is "to establish • • • uniform laws on the subject of bankruptcies throughout the United States." The idea was to have a uniform, national system of bankruptcy. In *Hanover National Bank* v. *Moyses,* 186 U. S. 181, 188, it was claimed that the provisions in the Act of 1898 relative to exemptions as allowed by State laws violated the requirements of uniformity. In holding against the contention this Court said that the uniformity required "is geographical and not personal."

The requirement of uniformity in the levy of excise taxes is merely a geographical one, not intrinsic.

Billings v. *U. S.,* 232 U. S. 261, 282.

The courts do not have the power and they will not add any limitations on the power of Congress to legislate on the subject of bankruptcies to that of uniformity therein contained.

Flint v. *Stone Tracy Co.,* 220 U. S. 154, 167-168.

The case of *Everard's Breweries* v. *Day,* 265 U. S. 545, involved the constitutionality of the supplemental prohibition act, which contained a provision against physicians pre-

scribing intoxicating malt liquors for medicinal purposes. In this respect it was claimed that the act violated the Eighteenth Amendment and invaded the powers of the States, reserved under the Tenth Amendment. This Court held that the choice of means and the extent of the exercise of a granted power are in the discretion of Congress, and that the courts will refuse to pass judgment on the wisdom or policy of a law. Neither will the Court inquire into the necessity for the law. At page 559 this language, to which nothing can be added, is used:

> "It is likewise well settled that where the means adopted by Congress are not prohibited and are calculated to effect the object intrusted to it, this Court may not inquire into the degree of their necessity; as this would be to pass the line which circumscribes the judicial department and to tread upon legislative ground. *McCulloch v. Maryland, supra,* p. 423; *Legal Tender Case, supra,* p. 450; *Fong Yue Ting* v. *United States, supra,* p. 713. Nor may it enquire as to the wisdom of the legislation. *Legal Tender Case, supra,* p. 450; *McCray* v. *United States,* 195 U. S. 27, 54; *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146, 141. What it may consider is whether that which has been done by Congress has gone beyond the constitutional limits upon its legislative discretion. *Ex Parte Curtis, supra,* p. 373."

The Frazier-Lemke Amendment is uniform. It has not been pointed out in what respects it does not possess uniformity. It operates throughout the United States with uniformity. The fact that it applies to farmers does not deprive the law of its uniformity, because there is a reasonable basis for the classification adopted and the test of uniformity is not personal, but geographical. The opinion of the Circuit Court of Appeals, below, p. 6, deals adequately with this contention. The decision in the case of *In re Leope,* 8 Fed. Supp. 778, 780, sustains these views. It

operates with the same degree of uniformity that the Act of 1898 does and is, therefore, clearly constitutional within that requirement as to uniformity.

B. The Fifth Amendment to the Constitution of the United States does not take away any power granted to Congress with respect to the subject of bankruptcies.

The Fifth Amendment does not operate to take away any power granted to Congress by the Constitution. It may be conceded that it does in some respect limit the manner, in which the power may be exercised, but it does not cut down, take away or vitiate the power itself. Therefore, the inquiry narrows itself to the question, Is the law here in question a bankruptcy law; a law within the granted power of Congress with respect to the subject of bankruptcies? If this question is answered in the affirmative, the law must be held to be constitutional.

In the case of *McCray* v. *U. S.*, 195 U. S. 27, it was claimed that a law passed by Congress imposing a heavy and oppressive tax on oleomargarine was unconstitutional in that it violated the due process clause of the Fifth Amendment by imposing such onerous burdens on the business of dealings in oleomargarine as in effect to destroy it. This Court held that if the law was a tax law and thus within the power of Congress, it was constitutional and that the Fifth Amendment does not operate to take away any granted power of Congress. At page 61, Mr. Chief Justice White, then a justice, said, "Whilst undoubtedly both the Fifth and Tenth Amendments qualify, insofar as they are applicable, all the provisions of the Constitution, nothing in those amendments operates to take away the grant of power to tax conferred by the Constitution upon Congress," and again at p. 63, speaking of the due process clause, he said, "That provision * * * does not withdraw or expressly limit the grant of power to tax conferred upon Congress by

the Constitution." The law was held to be constitutional.

In *Billings* v. *U. S.*, 232 U. S. 261, it was held that the tax imposed by the Tariff Act of August 1909 was constitutional as against the objection that the tax constituted a taking of property without due process of law. In answering the claim that the Constitution required intrinsic, and not geographical, uniformity in the levying of excise taxes and that the Fifth Amendment limited in that respect the power of Congress to tax, Mr. Chief Justice White said:

> "It is also settled beyond dispute that the Constitution is not self-destructive. In other words, that the powers which it confers on the one hand it does not immediately take away on the other; that is to say, that the authority to tax which is given in express terms is not limited or restricted by the subsequent provisions of the Constitution or the amendments thereto, especially by the due process clause of the Fifth Amendment."

It was held that the law in question was a tax law authorized by the Constitution and that the Fifth Amendment does not operate to take away the power to pass the law, which the Constitution expressly grants power to Congress to pass.

In *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, the corporation tax of 1909 was sustained against the contention of violating the due process clause of the Fifth Amendment, in that the classification adopted as a basis for the taxes thereby imposed is arbitrary, unreasonable and baseless. This Court held that if Congress had the power to enact the law, it was not in violation of the Fifth Amendment. Then after holding that Congress had the power to pass such an excise tax law, it disposed of the due process contention in one sentence, "What we have said as to the power of Congress to lay this excise tax disposes of the contention that the act is void as lacking in due process of law."

In the instant case we have clearly demonstrated in Point I that the law here in question is a law upon the subject of bankruptcies. If the Court finds that it is such a law, that disposes of all questions of due process of law and any others that might arise under the Fifth Amendment.

Substantially the same language was used in *Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1, 24-25, which was an action to restrain the corporation from voluntarily complying with the income tax provisions of the Tariff Act of 1913, in which the Court said:

> "So far as the due process clause of the Fifth Amendment is relied upon, it suffices to say that there is no basis for such reliance since it is equally well settled that such clause is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power and taking the same power away on the other by the limitations of the due process clause. *Treat* v. *White*, 181 U. S. 264; *Patton* v. *Brady*, 184 U. S. 608; *McCray* v. *United States*, 195 U. S. 27, 61; *Flint* v. *Stone Tracy Co., supra; Billings* v. *United States*, 232 U. S. 261, 282. And no change in the situation here would arise if it be conceded, as we think it must be, that this doctrine would have no application in a case where, although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property, that is, a taking of the same in violation of the Fifth Amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion."

In *Magnano Co.* v. *Hamilton*, 292 U. S. 40, was involved the constitutionality of a statute of the State of Washington imposing a tax of 15¢ per pound on all butter substitutes,

including oleomargine, sold within the State. It was claimed in that case that the tax was so heavy and onerous as to destroy the oleomargarine industry. The case involves the constitutionality of the mentioned statute under due process clause of the Fourteenth Amendment. This Court points out that the rules applicable in this respect are the same under both the Fourteenth Amendment and the Fifth Amendment. The cases are fully reviewed in this opinion and the Court points out that it has been only in rare and special instances that the due process clause contained in the Fifth Amendment has been a limitation upon the taxing power conferred upon Congress by the Constitution. It held that the due process clause is applicable to a taxing statute such as the one assailed in the cited case "only if the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property," citing numerous cases. It was pointed out that the Court will not enquire into the collateral purposes or motives of Congress in levying a tax of a kind within the reach of its lawful power. It held that a tax may not be stricken down simply "because its enforcement may or will result in restricting or even destroying particular occupations or businesses," citing many cases, "unless, indeed, as already indicated, its necessary interpretation and effect be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the State. The present case does not furnish such a demonstration." The Court reviewed numerous cases, including *Veazie Bank* v. *Fenno*, 8 Wall. 533, the *McCray* case, 195 U. S. 27, the *Child Labor* case, 259 U. S. 20 and numerous other cases. In conclusion the Court said, among other

things, that if it appears that a statute is plainly a taxing statute or that a statute is clearly an exercise of a granted power it will not be held to be unconstitutional even though the law may be oppressive or unwise. The Court said: "The statute here under review is in form plainly a taxing act, with nothing in its terms to suggest that it was intended to be anything else. It must be construed, and the intent and meaning of the legislature ascertained, from the language of the act, and the words used therein are to be given their ordinary meaning unless the context shows that they are differently used," and the concluding paragraph is: "From the beginning of our Government, the courts have sustained taxes although imposed with the collateral intent of effecting ulterior ends which, considered apart, were beyond the constitutional power of the lawmakers to realize by legislation directly addressed to their accomplishment. Those decisions, as the foregoing discussion discloses, rule the present case." In the instant case it is evident that the Frazier-Lemke Amendment is a pure bankruptcy law and the power of Congress to exercise this granted power is not to be cut down and the substance of it taken away by other provisions in the Constitution, including the Fifth Amendment. The rule in the *Magnano* case, and the other cases which we have cited, govern this case; and, if the Court finds that the Frazier-Lemke Amendment is a bankruptcy law, that settles also the question of whether or not it offends against the due process clause of the Fifth Amendment. We believe that the Court must find that it is a pure bankruptcy law and as such is constitutional.

In the *Child Labor* case, 259 U. S. 20, the rule that governs in this case was clearly recognized. In *United States* v. *Doremus*, 249 U. S. 86, the constitutionality of Section 2 of the Narcotic Drug Act of December 17, 1914, was involved and it was claimed that the law was a police regulation because it regulated the sale of narcotics to the extent

of requiring that prescriptions for narcotics by physicians be upon blanks provided by the Commissioner of Internal Revenue and also because the law provided for a most minute police regulation of the entire traffic. The Court in that case pointed out that if a law was really a tax law and the provisions in it bore some reasonable relation to the exercise of the taxing authority conferred by the Constitution, it cannot be invalidated because of the supposed motives which induced it or because, in the exercise of that power, what might otherwise be regarded as police regulation was adopted by Congress as an effective means for carrying into effect the power granted.

It was for the reasons just stated that this Court held in the case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181, that the Act of 1898 does not violate the Fifth Amendment. It is true that the question in that case in this respect involved a question of giving notice of proceedings. The notice was held to be within legislative power of Congress upon the subject. In speaking of the power of Congress, this Court said:

> "Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law, and we cannot find anything in this act on that subject which would justify us in overthrowing its action."

The language just quoted contains the implied limitation that a bankruptcy law must not be "so grossly unreasonable as to be incompatible with fundamental law." The meaning of this expression is not defined. A somewhat similar situation was referred to in *McCray* v. *U. S.*, 196 U. S. 27, 62-63, in which the Court for the purpose of argument assumed that it might be the duty of the judiciary to hold acts void upon the assumption that the Constitution by necessary implication forbade them as an exertion of

governmental power by Congress, if perverted by so great an abuse of the power as to destroy fundamental rights which no free government can consistently violate. The Court in that case said, however, that it was not necessary to pass on this question inasmuch as the law there involved was a taxing law which was within one of the granted powers of Congress and hence constitutional. In this case the law questioned is a bankruptcy law and hence within the power of Congress. Furthermore, the Frazier-Lemke Amendment is a reasonable exercise of the powers of Congress with respect to the subject of bankruptcies and is a remedy to deal with a grave and serious problem in the light of known facts which might well lead Congress to the selection of the law in question as an appropriate remedy for dealing with that problem.

It seems to us that the language referred to requires that a constitutional power be exercised in such a way as to constitute an exercise of the power granted. This the Frazier-Lemke Amendment does. If the law does not constitute an exercise of granted power, it is unauthorized by the Constitution and hence invalid. In *Fox* v. *Standard Oil Company of New Jersey*, decided by this Court on January 14, 1935, in speaking upon this question the Court said: "That a tax act might be so arbitrary as not to be an exercise of the taxing power at all, the form of a tax being but a cloak for something else." This we think is the true distinction. It is the distinction upon which many cases invoking the Fifth Amendment may be distinguished. In *Ochoa* v. *Hernandez*, 230 U. S. 139 the Court properly held that a taking of property under a military order made retroactive for which there was no military necessity was not an exercise of the war powers and consequently the taking was one without due process of law. In *Missouri Pac. Ry. Co.* v. *Neb.* 164 U. S. 203 the validity of an order of a State board permitting a party to build an elevator

on the railway company's right-of-way was involved. It was held that such an order requiring a railway company to permit a private party to use its right-of-way without compensation was a violation of the Fourteenth Amendment. It is not in point here. In *Loan Association* v. *Topeka*, 20 Wall. 655, a statute which provided for the issuance of bonds by a town to aid a private manufacturing enterprise is void because it is not a legitimate use of the taxing power. Taxes can be levied only for public purposes. When taxes are levied to be made the subject of bounty to private individuals the power is used to take one man's property and give it to another. Under such circumstances it is not an exercise of taxing power at all even though the law may assume that form. None of these cases are really in point at all. They have no bearing upon the question which is involved here.

C. There is no taking of petitioner's property within the meaning of the due process clause of the Fifth Amendment.

In so far as the petitioner claims that the obligations of its contract with the bankrupt are impaired, the contention is without merit for the reason that the power of Congress to legislate upon the subject of bankruptcies includes by necessity the power to impair the obligation of contracts. This was expressly held in the case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181. At page 188 this Court said:

> "Hence the importance of the distinction between the power of Congress and the power of the States. The subject of 'bankruptcies' includes the power to discharge the debtor from his contracts and legal liabilities, as well as to distribute his property. The grant to Congress involves the power to impair the obligation of contracts, and this the States were forbidden to do."

The petitioner has no rights in the bankrupt's property as such. In bankruptcy he has a right only to participate in the distribution of the bankrupt's estate after it has been converted into cash. Congress may legislate upon this matter and determine the manner and mode and time of the liquidation. We have pointed this out at considerable length in Point I of this brief. In support of this contention we cited such cases as *Burlingham* v. *Crouse*, 228 U. S. 459; *Williams* v. *U. S. F. & G. Company*, 236 U. S. 549; *Maynard* v. *Elliott*, 283 U. S. 273; and a large number of other cases. These authorities all hold that the bankruptcy proceedings terminate the rights of the parties as between themselves and places the whole matter in administration in bankruptcy. In the bankruptcy proceedings the rights of the parties are determined and adjusted and provision made for the distribution of the proceeds of the bankrupt's estate in payment of the claims of the parties as determined and adjusted by the bankruptcy court. We think that it is not necessary to repeat here what we have said in Point I upon this proposition. In passing we call attention to the fact that the petitioner's claim is in this respect that the denial to it of the right to foreclose its mortgage on the bankrupt's property in the State courts is a denial of due process. In the numerous cases which we have cited on this proposition in Point I, it is held that the matter of enforcing liens is a matter of bankruptcy and that Congress has the power to confer jurisdiction on courts of bankruptcy to deal with the matter. In the case of *Van Huffel* v. *Harkelrode*, 284 U. S. 225, *supra*, it was held that courts of bankruptcy have the power as courts of equity to transfer a lien on property from the property to the cash proceeds derived from the sale of it. It was held that such courts have this power as courts of equity without it being expressly conferred by statute and that bankruptcy courts may order property sold free from liens. In the *Van Huffel*

case this Court said that a statute conferring such jurisdiction would be "obviously constitutional." In *Taubel, etc., Co.* v. *Fox*, 264 U. S., cited *supra*, it was expressly held by this Court that the entire matter of jurisdiction over liens and conflicting claims may be placed under the jurisdiction of bankruptcy courts by act of Congress. In short the entire matter of the determination and the adjustment of the rights of creditors against the bankrupt and his estate and the remedies for such rights are within the power of Congress to legislate on the subject of bankruptcies. When this power is conferred upon bankruptcy courts it may be exercised in the manner and to the extent conferred.

The Frazier-Lemke Amendment is an exercise of the power of Congress in this respect. By this law Congress has conferred on courts of bankruptcy the power to deal with mortgages and other liens upon property of the bankrupt and such laws are within the constitutional power of Congress. There is no taking without due process in such a case. The "taking", if such it may be called, is one embraced within the power of Congress to legislate on the subject of bankruptcy. It is inherent in and a part of bankruptcy and this power cannot be taken away from Congress without destroying and vitiating the power itself.

The power of Congress to legislate with respect to the subject of bankruptcies has always been construed to include the power to deal with both secured and unsecured claims and to transfer liens from property to the proceeds of property and to do whatever is requisite in order to effectively administer the estate of the bankrupt. The numerous decisions which we have cited under Point I extend over almost the entire history of bankruptcy law in the United States and sustain this construction. It is a construction that is self evident from the power itself. It has never been thought that the power of Congress in this respect should be construed to mean that administra-

tion in bankruptcy deprives a creditor or lienholder of his property without due process of law. As was said by this Court in *Maynard* v. *Elliott*, 283 U. S. 273, 277, "Only compelling language • • • would warrant the rejection of a construction so long and so generally accepted, especially where overturning the established practice would have such far reaching consequences as in the present instance."

In passing, although we deem it unnecessary to advert to the fact, we think that this disposes of petitioner's complaint of loss of interest during the option period and the insufficiency of the rental to pay taxes, insurance and repairs. There might be some basis for petitioner's claim in ordinary proceedings, but not in bankruptcy. Furthermore, the rental fixed by the court is the compensatory equivalent for any alleged deprivation of the use of property in the eyes of the law. This has been expressly held in the so-called rent cases, *Block* v. *Hirsch*, 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman; Levy Leasing Co., Inc.*, v. *Siegel*, 258 U. S. 242, and in the *Minnesota Mortgage Moratorium* case, *Home Building & Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, and also in the case of *Peo.* v. *La Fetra*, 230 N. Y. 429, 130 N. E. 601.

Furthermore, while it may not be necessary to go into the matter, there is no denial of due process in any manner. The creditor is given the full appraised value of the farm. Thereby nothing is taken from him. The proceedings in this respect constitute due process in ordinary proceedings at law and in equity. There is no deprivation in a legal sense. This is true, because the creditor is given the equivalent in value out of the proceeds under the rule of the case of *Van Huffel* v. *Harkelrode*, 284 U. S. 225, *supra*, and because the proceedings for appraisal of the property, discussed *supra* under "3. Provision for appraisal of the Bankrupt Estate", insure to the creditor full value and are due process. *Garrison* v. *City of New York*, 21 Wall. 196; *Long*

Island Water Supply Co. v. *Brooklyn*, 166 U. S. 685, and *Crane* v. *Hahlo*, 258 U. S. 142, sustain this view. It is not necessary, however, to go to this length to sustain the Frazier-Lemke Amendment. We refer to this as matter to be considered in connection with the claim of petitioner of denial of due process. The proceedings under the Frazier-Lemke Amendment are constitutional both in bankruptcy under the granted powers of Congress with respect to the subject of bankruptcies and in ordinary legal proceedings.

Virtually all the questions raised in this appeal by appellants have just recently been decided by the U. S. Circuit Court of Appeals of the Fourth Circuit, sitting at Richmond, Virginia, in the case of *Thomas Campbell, a Bondholder*, v. *Alleghany Corporation*, No. 3831. In that case, the constitutionality of Section 77b of the Bankruptcy Act (Act of June 7, 1934, Chapter 424, 48 Stat. 912, 11 U. S. C. A. 204) was challenged on the same grounds that the constitutionality of Section 75, and subsection (s) of Section 75, are challenged in the case now here before this Court. In that case, the Hon. Judge Parker states in his opinion:

> "We entertain no doubt as to the constitutionality of the statute. It is an exercise of the power conferred on Congress by Art. 1, Sec. 8, Clause 4 of the Constitution, 'to establish * * * uniform laws on the subject of bankruptcies throughout the United States', adapted to the conditions presented by modern industrial organization. Prior to the passage of the act, neither proceedings under the old bankruptcy laws nor receiverships in equity furnished adequate relief for distressed corporate debtors, their creditors and stockholders, under modern conditions. * * * Proceedings under the old bankruptcy laws were inadequate because no machinery existed to scale down secured debts without a sale of the security; and a sale almost necessarily resulted in a sacrifice of the property at an inadequate price because of the lack of persons in a position to bid for it. If forced to sale, it was fre-

quently, if not generally, bought in by a committee of bondholders at the inadequate prices which forced sales notoriously yield, with the result that non-assenting bondholders received little and stockholders nothing at all. • • • Only by the further exercise of the bankruptcy power of Congress could adequate relief be afforded these distressed corporate debtors and their creditors; and the act in question was passed for the purpose of affording this relief."

• • • • • • •

"The grant of power to Congress to establish uniform laws on the subject of bankruptcies is not limited to the forms in which that power has heretofore been exercised by Congress or by the laws relating to bankruptcy which had been enacted in England or in the several American colonies prior to the adoption of the Constitution. See article by Prof. Gerdes in XII New York University Law Quarterly Review 198, and article by Jacob J. Kaplan, vol. XXI American Bar Association Journal p. 47, for a history of these acts. All phases of the relationship between a debtor financially embarrassed and his creditors is brought under the control of Congress by the constitutional grant of power; and the fact that a particular mode has hitherto been employed in dealing with this relationship is not to be taken as a measure of the power over it. *Hanover Nat. Bank* v. *Moyses*, 186 U. S. 181; *Sturges* v. *Crowninshield*, 4 Wheat. 122; *In re Landquist* (C. C. A. 7th) 70 Fed. (2d) 929; *In re Klein*, Fed. Cas. No. 7865 reported as note to *Nelson* v. *Carland*, 1 How. 265, 277; *In re Reiman*, 7 Ben. 455, Fed. Cas. No. 11,673; *Kunzler* v. *Kohaus*, 5 Hill 317. As said in Story on the Constitution, Sec. 1113, quoted in *In re Reiman, supra:* 'Perhaps as satisfactory a description of a bankrupt law as can be framed is that it is a law for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts. And a law on the subject of bankruptcies, in the sense of the Constitution, is a law making pro-

vision for cases of persons failing to pay their debts.'

And, as pointed out by the Circuit Court of Appeals of the Seventh Circuit in *In re Landquist, supra,* inability to pay (except under the act of 1867) has always been recognized in this country as entitling a debtor to the benefit of the bankruptcy acts 'whether that inability were caused by a lack of assets or a lack of liquidity of assets.' Certainly, the act here in question is for the relief of corporate debtors who are unable to pay and their creditors, and falls well within the purpose of the constitutional grant of power."

* * * * * * *

"Little need be said as to the question which arises under the Fifth Amendment. There is no question, of course, but that the exercise of the bankruptcy power by Congress, as is the case with other delegated powers, is subject to the requirement of due process contained in that amendment. *Monongahela Nav. Co.* v. *U. S.*, 148 U. S. 312, 336; *Hanover Nat. Bank* v. *Moyses, supra,* 186 U. S. 181, 192. But as any exercise of the bankruptcy power impairs the obligation of contracts, such impairment is not to be taken as in itself a denial of due process. For the provisions of the act to violate the amendment, they must be so grossly arbitrary and unreasonable as to be 'incompatible with fundamental law.' *Hanover Nat. Bank* v. *Moyses, supra.* We do not think that the requirement that secured creditors scale their debts in accordance with a plan which two-thirds of them are willing to accept and which has been approved by the court as reasonable and fair, and accept in lieu of payment in money such securities as are specified in the plan, can be said to be such an arbitrary and unreasonable exercise of the bankruptcy power as to amount to a denial of due process.

"The fact that secured debts are affected by the act does not, of course, raise any grave constitutional question, and can be dismissed with brief comment. 'A secured debt or lien is, so far as the Constitution

of the United States is concerned, a no more sacred kind of property than an unsecured debt, * * * and the Constitution expressly permits and grants to Congress the power to affect such property, whether it be an unsecured debt or whether it be a lien, by laws relating to the subject of bankruptcies.' *In re Burgh*, 7 Fed. Supp. 184, 185.

"As a matter of fact, no property in any real sense is taken from the dissenting creditor when he is compelled under 77b to scale his claim and accept securities in lieu thereof. The securities held by him have already shrunk in value before the proceeding under the act is instituted; and all that is required of him is that he face reality and accept his pro rata interest in the debtor's property in a form which will not jeopardize the rights of other creditors similarly situated. * * * and, when the situation is viewed realistically, it is readily seen that he is not required to surrender any part of the value either of his securities or of the property available for the payment of his claim."

* * * * * * *

"Doubts as to the validity of Section 77b are based very largely upon the fact that the relief which it provides for embarrassed corporations, their creditors and stockholders, has not heretofore existed under the laws of this country, and for that reason seems novel and questionable. It must be remembered, however, that the power granted Congress over the subject of bankruptcies is plenary, and that in its exercise Congress is not limited by what has been attempted in the past but may shape its remedies in a way to meet adequately the problems of the present. Like other constitutional grants of power, that giving Congress power over bankruptcies is to be interpreted, not in the light of the conditions with which the framers of the Constitution were familiar, but of what is required under modern conditions to deal adequately with the relationship existing between embarrassed debtors and their creditors. As said by Chief Justice Hughes in

Home Building & Loan Association v. *Blaisdell*, 290 U. S. 398, 442, 'If by the statement that what the Constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—"We must never forget that it is a constitution we are expounding" (*McCulloch* v. *Maryland*, 4 Wheat. 316, 407)—"a constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." Id., p. 415. When we are dealing with the words of the Constitution, said this Court in *Missouri* v. *Holland*, 252 U. S. 416, 433, "we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. • • • The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago".'"

CONCLUSION.

The Frazier-Lemke Amendment is an exercise of the power of Congress to legislate upon the subject of bankruptcies, which was enacted to deal with the problem of the indebtedness of the American farmer. This and other laws were passed to deal with the general debt problem during the present emergency. It is a law that is limited by its terms and expires on March 3, 1938. It is based upon the conditions actually existing and is designed to afford a remedy for them. In passing this law Congress had the right and it was its duty to so frame it as to promote the general welfare. Congress is the exclusive judge of the means to be employed to achieve the purposes which it had in view. That the protection of the basic

economic interest of America is a legitimate end to be attained by legislation is settled by the decisions of this Court. An interpretation should not be placed on the Constitution which will restrict the scope of the power of Congress with respect to legislation on bankruptcy so that it will be limited by prior Congressional legislation on the subject since the adoption of the Constitution. The Constitution is a declaration of principles and the powers conferred upon Congress, including that of bankruptcy. The power to legislate on the subject of bankruptcy is a comprehensive one and includes the power to enact the Frazier-Lemke Amendment. The history, the practical construction and the decisions upon the subject all confirm the interpretation that the subject of bankruptcy is comprehensive enough in its scope to include a law containing the provisions of the Frazier-Lemke Amendment. The interpretation which would adopt prior congressional legislation as a criterion would strangle the constitutional power of Congress. It should always be borne in mind in construing a Constitution the necessity of guarding against a narrow construction of it. This was very aptly stated by Mr. Chief Justice Hughes in *Home Building & Loan Ass'n. v. Blaisdell*, 290 U. S. 398, 443:

> "It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—'We must never forget that it is a constitution we are expounding' (*McCulloch* v. *Maryland*, 4, Wheat. 316, 407)—'a constitution intended to endure for ages to come, and consequently to be adopted to the various crises of human affairs.' Id., p. 415. When we are dealing with the words of the Constitution, said this Court in *Missouri* v. *Holland*, 252 U. S. 416, 433, 'we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. • • • The case before us must be considered

in the light of our whole experience and not merely in that of what was said a hundred years ago.' "

It is not the function of this Court to determine the necessity or the wisdom of this law. We think it is a good law and that its good results are already manifest. It is a constitutional law. Its constitutionality is not destroyed, nor in any way affected by the fact that the application of some of the principles in the law is novel. The principles underlying the law are old and accepted principles of bankruptcy and equity law. A new application is made of these principles to the emergency now existing. Congress has the power to adapt its legislation to the needs of the nation and a new application of Congressional power does not render it unconstitutional.

Respectfully submitted

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In The

Supreme Court of the United States of America

October Term, 1934

No. 717

LOUISVILLE JOINT STOCK LAND BANK OF LOUISVILLE, KENTUCKY, PETITIONER

vs.

WILLIAM W. RADFORD, SENIOR, RESPONDENT

On writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

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In The

Supreme Court of the United States of America

October Term, 1934

No. 717

STATEMENT AND BRIEF FOR THE RESPONDENT

PRELIMINARY STATEMENT

Alexander Hamilton, shortly after the conception of the nation, stated that *agriculture,* commerce, and revenue, were the chief concerns of government. Something over a century later, Woodrow Wilson also stressed the fact that *agriculture* was one of the vitals of the Nation.

"I need not stop to tell you how fundamental to the Nation is the production of its food." (First Annual Address.) And again, "* * * while they (the farmers) have sustained our life, they did not in the same degree with some others share in the benefits of that life." (Remarks, July 17, 1916, signing Farm Loan Bill.)

A fact all men know.

Data from government publications subsequently submitted, show that since 1921, the farmer has in each year, received only one-half or less of his normal income. That in each year it has been at least $5,000,000,000.00 smaller than it should have been. And that it was not until, for two successive years, his income became about 67 percent less than normal, that he became delinquent, in meeting the interest requirements of his

mortgage, and eviction from farms, as a result, a national menace.

We will show by their own statistics, that in the grain belt of the Middle West alone, a small class of mortgage holders have already acquired not less than 10,000,000 acres of the best farm land in the country, formerly owned by prosperous citizens, belonging to a class that has always been the stable, conservative, and dependable bulwark of the nation.

To arrest the alarming threat to national security, that will be brought about by the concentration of ownership of the great farm areas of the country in the hands of a few, contrary to the traditional policy of the United States, Congress has passed an amendment to the National Bankruptcy Act, known as the Frazier-Lemke Act.

THE LAW OF THE CASE

Inasmuch as this case presents only questions of law for the decision of the Court, as distinguished from questions of fact, we shall state them before referring to the facts:

(a) Does the constitutional power of Congress to establish uniform laws upon the subject of bankruptcies (Const., Art. 1, Sec. 8, Clause 4), include the power to enact a law primarily designed for the relief and protection of an insolvent farmer, containing within its provisions, a moratorium, upon reasonable terms, and giving the farmer, by way of exemption, the exclusive privilege, over the objections of his creditors, to repurchase his property at a price to be fixed by appraisement approved by the Court, as distinguished from a law having for its primary purpose, a prompt sale, speedy distribution of the assets of the farmer among his creditors, and the eviction of the farm owner?

(b) Is the progress of jurisprudence in the United States to be turned backward to the year 1789, and the power of Congress to establish uniform laws on the subject of bankruptcies be limited in 1934, to the type of such laws in force in England at the time of the Revolution, thus making it impossible for a debtor on his own initiative to be relieved of the burden of an unpayable debt and thereby converting the farmers of America into tenant peasants?

(c) Is the Act of March 3, 1933, Section 75, as amended by the Act of June 28, 1934, which amendatory Act is known as the Frazier-Lemke Act, so unjust and unreasonable in its terms and provisions as to impel the conclusion, that it is an arbitrary attempt to exercise legislative power, and hence does its operative force and effect deprive a lienholder of his liberty or his property without due process of law, in violation of the Fifth Amendment to the Federal Constitution?

The District Court (Dawson, J.), and the Circuit Court of Appeals for the Sixth Circuit, on appeal, upheld the law as against the contentions of the lienholder. (Rec., pp. 52, 101.)

And thereupon this Court, moved by the novelty and importance of the question involved, issued herein a writ of certiorari.

The contention of the lienholder in this case, if sustained by this Court would prevent a class of citizens, comprising one-third of our population, from obtaining such a privilege of financial reorganization as will afford them an opportunity, albeit a distant one, to be retained as owner-farmers, in keeping with the traditional policy of the Republic.

The contention of the lienholder in this case and which is typical of that made in the various courts

by other large mortgagees, reduced to its last analysis, is that Congress, under its constitutional bankruptcy power, cannot extend to a class of citizens, who formed the Republic, defended it, and for a century and a half have been regarded as its backbone, the right at this time, to so reorganize their financial affairs that they may remain as the dependable, stable and conservative bulwark of the nation. That instead, in order to satisfy the greed of a few, they must be reduced to the status of hired hands, to whom at the present time is paid the meagre wage of $20.00 a month. That these lienholders, who in many cases refused to accept a substantial payment on their mortgages from the Federal government under the Emergency Farm Mortgage Act of 1933, and who did not elect to take the relatively small shrinkage thereby implied, can force the farmer to take a shrinkage of all his pecuniary investment in his farm, plus many years of hard effort. That such lienholders hold an exclusive franchise to seize such land as a hedge against possible inflation, or exclusively profit by a possible or probable future prosperity that may restore farm lands to the level they were when the liens were created. That thereby they will have the exclusive right to realize exorbitant profits on their present investment. But that the farmer, although his investment in the farm is several times that of the lienholder, cannot under the Constitution, which his hand helped write, be granted that privilege. But must be content to labor at a meager pittance for those who formerly considered it a privilege to make him a loan. That it must be noted that these farmers whom it is now proposed to evict, because under the Constitution as framed, they are claimed to have no right as do the lienholders, are practically all past the

prime of life. That they do not have any chance whatsoever of accumulating a future competence, either for their own security or for the benefit of their descendants, except by regaining the ownership of their own "vine and fig-tree" (Micah 4:4).

THE FACTS

The ultimate facts of this case are within a small compass: Radford, a farmer, executed two mortgages to Louisville Joint Stock Land Bank, one executed in 1922 and one executed in 1924 (Rec., pp. 18, 27), and aggregating $9,000. Having in mind that under the terms and provisions of the Federal Farm Loan Act (Title 12, U. S. C. A., Banks and Banking, Section 771, Fifth Subdivision), a land bank might not make a loan upon land for more than fifty per cent of its value, it would seem that the land of Radford was worth $18,000 in 1924. On December 4, 1934, an amended report of appraisement was filed and approved by the Court, fixing the market value of the land, also the reasonable and fair value of the land, at $4,445 (Rec., p. 87).

Radford failed to make the payments required of him by the mortgage. A suit was brought to foreclose the mortgages, resulting in a judgment accordingly (Rec., pp. 35, 41).

On February 26, 1934, Radford filed a petition for debtor's relief under Section 75 of National Bankruptcy Law (Rec., pp. 8, 9). An order of approval was accordingly entered (Rec., p. 10).

On November 10, 1934, Radford filed an amended petition in which he asked to be adjudged a bankrupt, as proveded by Subdivision (s), Section 75, Act June 28, 1934 (Rec., pp. 11-14).

Louisville Joint Stock Land Bank, a lienholder cred-

itor of Radford, filed its answer to the second amended and substituted petition of Radford (Rec., pp. 15-50).

The debtor by way of replication admitted the allegations of the answer (Rec., p. 50).

So that the only question arising on this appeal is one of law, the constitutionality of the Acts March 3, 1933, and of June 28, 1934, (the Frazier-Lemke Act), of which is predicated the right of the farmer to the relief granted him in the District Court in this case:

(a) The right to be protected against legal proceedings for five years with regard to his farm (Rec., p. 80), dependent on the payment of an annual rental fixed by the referee for the first year at $325 (Rec., p. 82).

(b) The right to clear the farm in question from the lien of the mortgage thereon by paying into court within five years, the sum of $4,445, found by the appraisers in an amended report (Rec., p. 87), approved by Judge Dawson (Rec., p. 86), to be the fair and reasonable value, likewise the market value, of the property of the debtor on which Louisville Joint Stock Land Bank holds a mortgage.

(This right of the debtor is subject to the right of the lienholder at any time within five years to ask a reappraisement of the property, in which event the debtor will be required to pay the higher of the two appraisements.)

Radford was adjudicated a bankrupt and the proceeding was referred to Nat C. Cureton, as Referee in Bankruptcy (Rec., p. 51).

Radford then petitioned for the relief to which he claimed to be entitled under the Frazier-Lemke Act (Rec., p. 67).

Appraisers were appointed (Rec., p. 68), who filed a report as such (Rec., p. 69).

At a hearing before the referee, the lienholder made an offer to purchase the property, which was declined (Rec., p. 71). The details of this will be adverted to in the brief.

The record contains a stipulation to the effect that at the hearing before the referee, the lienholder failed to avail itself of a proffered opportunity to introduce independent evidence of the value of the security held by it for the loans of Radford. (Rec., p. 99.)

The referee fixed "the fair and reasonable value of the mortgaged property, but not necessarily its market value," at $4,445.00, the amount of the appraisement (Rec., p. 72). The exemptions of the bankrupt were set aside (Rec., p. 73). An order was entered staying all proceedings against the debtor for a period of five years (Rec., p. 80) and the rental value of the land was fixed (Rec., p. 82).

The proceedings before the referee were reviewed by Judge Dawson on a petition for a review filed by Louisville Joint Stock Land Bank (Rec., pp. 82-84). Judge Dawson permitted the appraisers to file an amended report, approved by the Court (Rec., pp. 85-88), fixing separately "the fair and reasonable value of the property of the debtor on which Louisville Joint Stock Land Bank has a mortgage"; also the "market value of said land" (Rec., p. 87). This value in the case at bar is identical in both instances. Judge Dawson affirmed the order of the referee (Rec., p. 86).

The order of Judge Dawson has been affirmed by the Circuit Court of Appeals (Rec., pp. 101-112).

ANALYSIS OF DEBTOR'S RELIEF DECISIONS.

By the Act of March 3, 1933, provision was made respectively for the relief of individual debtors generally (Section 74); for farmers in particular (Section 75); and for certain types of corporations (Section 77, amended, June 7, 1934, and now known as Section 77B). Section 75 was amended June 28, 1934, by the Frazier Lemke Act.

Section 75, as amended June 28, 1934, has been held constitutional.

Louisville Joint Stock Land Bank v. *Radford*, (6 C. C. A.) 74 Fed. (2), 413, Rec., pp. 101 *et seq.*

In re Radford, (D. C. W. D. Ky.) 8 Fed. Supp. 480, Rec., pp. 52 *et seq.*

In re Cope, (D. C. Colo.) 8 Fed. Supp. 778.

In re Cyr, (D. C. N. D. Ind.) Commerce Clearing House, Bankruptcy Service, p. 1331.

In re Harry G. Jones, (Western Dist. of Mo., March 13, 1935, Otis, J.) *

*Judge Otis, in the opinion and order, held that congress had the power to legislate in order to accomplish results intended.

"What this Act does to the secured creditor of a bankrupt best may be made clear by a supposititious case.

"A, the owner of an 80-acre farm, on January 1, 1930, borrowed from B $5,000, giving to B his note for that amount, payable in five years, with interest at 6 per cent, and giving to B also, to secure the payment of the note, a deed of trust to his farm. The note was due January 1, 1935. B would have had the right, if the note was not paid when due, to sell the farm and to apply the proceeds to the payment of the note.

"But A has petitioned to be adjudged a bankrupt in accordance with the provisions of the Frazier-Lemke amendment. His farm has been appraised as of the fair value of $2,000. B has refused to consent to the sale by the trustee of the farm to A upon the terms authorized by the amendment and has objected in writing thereto. B has been deprived, however, of the right to cause A's farm to be sold and to apply the proceeds of the sale to the payment of the note.

The court is required to stay for five years all proceedings by B to enforce his deed of trust in accordance with its provisions. If, during that period, A pays semi-annually a reasonable rental on the farm, say in the amount of $60 (being 6 per cent on a valuation of $2,000) and at the end of that period pays into court $2,000, the lien is ended and A is discharged from further obligation as to both the prin-

cipal and the accumulated interest on the $5,000 note.

"Such is the suppositious case.

Basis of Power

"Did congress have the power to legislate so as to accomplish these results?

"The only power claimed for congress in this connection is in clause 4 of section 8 of article 1:

> "The congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States.

"The Constitution does not define what is meant by the word 'bankruptcies.' The supreme court never has formulated an all-inclusive definition of the word. But a consideration of opinions of that and other courts dealing with the subject justifies us in saying that the purpose of bankruptcy is to secure finally to the creditors of a debtor distribution of the value of at least a part of his assets and to the bankrupt a discharge from his debts to the ends that the creditors may be paid as much as may be and that, in an economic sense, the bankrupt may have a new start in life. Whatever legislation is within that broad purpose is sufficiently related to the subject of bankruptcies to be within the power conferred on congress by the Constitution.

"Bankruptcy certainly does not involve a surrender of all a bankrupt's assets. What the law of the state in which he lives exempts from execution is saved to him. The theory is that it is better to leave to him the means with which to begin his rehabilitation and to save society from the burden of immediately supporting him and his family than to give to his creditors the last penny in value of his property.

"None questions the right of congress to allow a bankrupt to retain what the state law exempts. None could question the power of congress itself directly to prescribe what exemptions, within reasonable limits, the bankrupt should have. Whatever amount reasonably might be said to be necessary to enable the bankrupt to begin his rehabilitation and to save him from becoming a burden to society, that amount congress has the right to save him, notwithstanding bankruptcy.

"If, for the attainment of such a purpose, congress may save absolutely to the bankrupt a substantial part of his assets, why may it not, for the attainment of the same purpose, save to him the mere possession of all of his assets for a while, giving to his creditors for that period a reasonable rental for such assets and their fair value at the end of the period?

"A negative answer to this question can be justified only upon the theory that the word 'bankruptcies' as it is used in the Constitution necessarily is limited in meaning to its exemplification a century and a half ago. But none of the concepts of the Constitution is so limited. This one is not. While none of the concepts of the Constitution is so elastic that it may be distorted to defeat an end aimed at in its formulation, each is sufficiently elastic to enable its original purpose to be accomplished by varying means and methods."

Judge Otis continued: "In the light of this principle and of the purpose of bankruptcy it cannot be said that the Frazier-Lemke amendment is invalid simply because it postpones realization by the creditors of the fair value of the bankrupt's non-exempt assets, giving them meanwhile a reasonable rental, and allowing to the bankrupt temporary possession as a means of aiding him toward rehabilitation and of saving him from becoming a burden to society.

"Of course this amendment impairs the obligations of contracts. Any bankruptcy act does that. Of course it destroys private property. Any bankruptcy

Judge Robert L. Williams, (D. C. E. D. Oklahoma), has officially stated orally his opinion that the Act was constitutional.

Also Judge Martineau, Commerce Clearing House Bankruptcy Service, p. 1224, (concurred in by Judge Ragon, according to the daily press); also as to Judge Raymond (D. C. W. D. Mich.), Ib., p. 1239.

Judge Chesnut (D. C. Md.) has upheld the theory of the Act as valid, but decided the details thereof violated the Fifth Amendment.

In re Bradford, 7 Fed. Supp. 665.
Note analysis of Judge Chesnut's opinion post, in the appendix.

Judge Dawson did not cite Judge Chesnut's opinion; neither did Sixth Circuit Court of Appeals in the opinion in the proceedings at bar; nor did counsel for the lienholder in the proceeding at bar cite Judge Chesnut's opinion in the brief filed by them in the Circuit Court of Appeals.

Judge Symes (*In re Cope, supra*), did not cite Judge Chesnut's opinion, nor did Judge Otis.

Judge Way (D. C. E. D. Va.) orally announced his concurrence in the opinion of Judge Chesnut.

Judge Dickinson (D. C. E. D. Pa.) has declined to hold the Act unconstitutional, holding the question to

act does that. In these respects it presents nothing new."

In concluding, Judge Otis said:

"It is new in that it impairs security given for a debt. No bankruptcy act has done that in the past. Instead of impairing only one contract, it impairs two contracts—the primary contract to pay the debt and the secondary contract to surrender on a stipulated date specific property in or toward payment of the debt. But as against bankruptcy, one kind of contract is no more sacred than another. The power of congress to provide for the discharge of debts through bankruptcy is not limited to any single class of debts. It includes secured debts as well as those which are not secured.

"The exceptions to the order of the referee in bankruptcy having been duly considered by the court, and the court being fully advised in the premises, are by the court overruled. The order of the referee is confirmed and approved. It is so ordered."

be one for this Court to decide in the first instance. Likewise see:

In re Moore, (Commerce Clearing House, Bankruptcy Service, p. 1149.)

In *Paine* v. *Capital Freehold Loan & Invst. Co.*, 8 Fed. Supp. 500, Judge Atwell (D. C. N. D. Tex.) upheld the theory of the law, but reserved judgment as to the details thereof.

Judge Lindley (D. C. E. D. Ill.) has likewise upheld the theory of the law.

In re Duffy, 9 Fed. Supp. 166.

In a number of cases the Frazier-Lemke Act (Section 75), has been assumed to be constitutional.

Zapalac v. *White*, 9 Fed. Supp. 419.
In re Lowman, 8 Fed. Supp. 886.
In re Klein, 9 Fed. Supp. 57.
In re Stacy, 9 Fed. Supp. 127.
In re McMurray, 8 Fed. Supp. 449.
In re Cragg, 9 Fed. Supp. 41.
In re Coller, 8 Fed. Supp. 447.
In re Crocker, 9 Fed. Supp. 126.
In re Dickinson, 9 Fed. Supp. 227.
In re Wilkin, 8 Fed. Supp. 222.
In re Arend, 8 Fed. Supp. 211.
In re Peterson, 8 Fed. Supp. 86.
In re Samuelson, 8 Fed. Supp. 473.
In re Smith, 9 Fed. Supp. 277.
In re Chab, 8 Fed. Supp. 195.
In re Kolina, 9 Fed. Supp. 170.
In re Rank, 9 Fed. Supp. 171.
In re Conciliation Commissioner, 5 Fed. Supp. 131.
In re Palma Brothers, 8 Fed. Supp. 920.

(Following citations are from Commerce Clearing House, Bankruptcy Service. References are to pages of the service)

In re Sinclear, 1157.
In re Dickinson, 1247, 1248.
In re Chaboya, 1248.
In re Rice, 1307.
In re Clark, 1308, 1309.
In re Suck, 1309.
In re Hilliker, 1329, 1330.
In re Cooke, 1330.
In re Henderson, 1330.
In re Houser, 1332.
In re Thistler, 1333.
In re Franklin, 1144.
In re Pindhomme, 1213.
In re Peters, 1214.
In re Storey, 1215.

Section 74 has been declared constitutional.

In re Landquist, (7 C. C. A.) 70 Fed. (2) 929.
In re Victor, (7 C. C. A.) 70 Fed. (2d) 937.
In re Sterba (7 C. C. A.), 74 Fed. (2d) 413.
In re Jacobs, 7 Fed. Supp. 749.
Collins v. *Welch*, (9 C. C. A.) Commerce Clearing House, Bankruptcy Service, p. 1350.
In re Burgh, 7 Fed. Supp. 184.

Section 74 assumed to be valid.

In re Weissbaum, 2 Fed. Supp. 967.
In re Collier, 4 Fed. Supp. 700.
In re Looker, 6 Fed. Supp. 571.
In re Doelger, 6 Fed. Supp. 776.
Molina v. Murphy, 71 Fed. (2d) 605.
Santos v. Noreda, 71 Fed. (2d) 608.
In re Hillwert, 71 Fed. (2d) 411.
In re Faour, 72 Fed. (2d) 719.

(The following references are to pages in Commerce Clearing House, Bankruptcy Service.)

In re Cosgrave, 1257
In re Lang, 1268
Brunn v. Wickscher, 1269
In re Kusel, 1289.

Section 77B has been assumed to be valid:

(References are to pages Commerce Clearing House, Bankruptcy Service.)

In re South Construction Company, 1117.
In re Midland United Company, 1117.
In re National Department Stores Co., 1118.
In re Lebolt, 1127, 1138.
In re Flamingo Hotel Co. 873.
In re Austin Hotel Co., 875
In re Paramount Publix Corporation, 875.
In re St. Louis Public Service Company, 876.
In re Texas Gas Utilities Co., 877.
In re White Truck & Transfer Co., 887.
In re St. Louis & San Francisco Ry. Co., 888.
In re 1030 *North Dearborn Bldg. Corporation*, 1105.
In re Austin Hotel Co., 1105.
In re Surf Bldg. Corp., 1172.
In re Allied Owners Corp., 1206.
In re DeWitt Clinton Co., 1207
In re Grinnell-Texas Co., 1224.
In re Fonda, etc., R. R. Co., 1270.
In re Bush Terminal Co., 1288.
In re Milady's Footwear Corporation, 1304.
In re Wayne Pump Co., 1321.
In re Poland Union, 1350.
In re Associated Gas & Electric Co., 1155.
In re Prudence-Bonds Corporation, 1156, 1301, 1302.
In re Mo.-Kans. Pipe Line Co., 1162.
In re Central Funding Corporation, 1297.

See also:

In re Studebaker Corporation, 9 Fed. Supp. 426.
In re National Lock Co., 9 Fed. Supp. 432.
In re South Coast Co., 8 Fed. Supp. 43.
In re Rialto Properties Co., 8 Fed. Supp. 57.
In re Syndicate Oil Corporation, 8 Fed. Supp. 213.
In re Sierra Salt Corporation, 8 Fed. Supp. 922.
In re Central Public Utility Corporation, 8 Fed. Supp. 17.

In re Middle West Utilities Company, 8 Fed. Supp. 38.
In re New York Title & Mortgage Co., 9 Fed. Supp. 319.
In re Union Guarantee & Mortgage Co., 8 Fed. Supp 281.
In re Consolidated Gas Utilities Co., 8 Fed. Supp. 385.
In re Electric Public Service Corporation, 9 Fed. Supp, 127.
In re Coney Island Hotel Corporation, 9 Fed. Supp. 329.
Bryan v. Welsh, (10 C. C. A.) 72 Fed. (2d) 618.

Section 77B has been declared constitutional.

In re Chicago, Rock Island & Pacific Ry. Co., 72 Fed. (2) 443.
Consult, 19 Va. Law Review, 340, 348, 350.
Bibliography, Commerce Clearing House Bankruptcy Service, 1093-1095. Also, pp. 111-127, 151-158, 611, 613, 675, 712. Opinion of Solicitor General Thacher, 864-870.

The attention of the Court is called to "Corporate Reorganizations", the publication of which started August, 1934.

The August number begins with the biography of Hon. John M. Woolsey (D. C. N. Y.) who has upheld the constitutionality of the Corporate Reorganization Act (June 7, 1934), which the Court will recall is predicated of voluntary action on the part of the debtor. (See p. 30 of the August, 1934, number, Corporate Reorganizations.)

See, also, ruling Judge Coxe (D. C. N. Y.), as to the constitutionality of Corporate Reorganizations, August, 1934, p. 37.

Edwin S. S. Sunderland of the New York bar contributes an interesting article on the subject, The Historical Background of the Corporate Reorganization Act, a perusal of which will aid the Court to see the

fallacy of the argument of the lienholder in the case at bar (pp. 4 *et seq.*).

See, also, the September number of the same magazine.

See, also, in the August number of the magazine quoted, an article by W. Randolph Montgomery, counsel to National Association of Credit Men, quoting an article by Reuben G. Hunt of the Los Angeles bar, who (as Mr. Montgomery says) is "a recognized authority on bankruptcy" upholding the constitutionality of the act.

At p. 42 of the magazine cited is a list of railroads and electric lines which are seeking to reorganize under Corporate Reorganization Act, all of which proceedings are to be held void if the contention of the lienholder in this case be sustained.

The September number of the magazine cited (p. 52), refers to the action of Judge Davis (D. C. Mo.) who impliedly held Corporate Reorganization Act valid by dismissing a petition under the act on its merits.

See, also, action of Judge Lindley (D. C. Ill.) in assuming jurisdiction of a corporate reorganization.

Judge Bryant (D. C. N. Y.) also disposed of a case (p. 59), in which a multitude of counsel were engaged and in which the question of constitutionality was not raised.

THE FRAZIER-LEMKE ACT

The pertinent provisions of the Frazier-Lemke Act may be thus analyzed:

The Act is subdivision (s) of Section 75, National Bankruptcy Act, enacted March 3, 1933. The section, as originally enacted, provides, subdivision (a), for the appointment of Referees (in bankruptcy), to be known

as Conciliation Commissioners upon the petition of a certain number of farmers. In the case at bar, such appointment was duly made.

Subdivision (b) of the Section is regulatory generally of Conciliation Commissioners. No question of procedure arises under subdivision (b) of the Act in the proceeding under review herein.

Subdivision (c) of the Act provides for the filing of a petition by a farmer stating that the farmer is "unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time (in which) to pay his debts." Such a petition was filed by the farmer (Radford) in the case at bar.

Subdivision (d) of the Section requires the farmer "within such time and in such forms as the rules provides" to "file an inventory of his estate." Such an inventory was filed in the proceedings under review herein.

Subdivision (e) of the Section provides for a first meeting of the creditors of the farmer. The procedure at the first meeting is prescribed. In the proceedings under review herein such a meeting was held and no question of procedure with respect thereto arises in this proceeding.

Subdivision (f) to (m) both inclusive of the Section are regulatory of the procedure to be had in case an extension or composition proposed is submitted to the court for action. No such proposal was acted on in this proceeding under review herein because the farmer was unable to obtain the necessary consent of his creditors to such a proposal.

Subdivision (n) provides that the filing of a petition shall subject the farmer and his property wherever located to the exclusive jurisdiction of the court. Its juris-

diction, and that of its officers, the duties of the farmer, and the rights and liabilities of creditors, and third persons, with respect to the property of the farmer, and the jurisdiction of the appellate courts, are the same as if a voluntary petition for adjudication had been filed, and a decree of adjudication entered on the day the petition was filed.

Subdivision (o) provides that except with the consent of the judge, certain proceedings "shall not be maintained, in any court or otherwise, against the farmer or his property * * *." Six classes of proceedings are then enumerated, including proceedings for any debt, foreclosure, or certain specified actions for recovery of possession of land, or proceedings to acquire title to the land by virtue of any tax sale, or proceedings such as attachment, or proceedings to sell land in satisfaction of any judgment or lien, or seizure, distress, sale, or other proceeding under an execution or under any lease, lien, chattel mortgage, or the like.

Subdivisions (p) and (q) of the Section are immaterial in the review being had herein. Subdivision (r) of the Section is definitive of a farmer. Radford is a farmer as defined in this subdivision.

Subdivision (s) of the Section, the Frazier-Lemke Act, needs to be read in its entirety to be understood. The successive procedural steps thereby required to be taken may be thus outlined:

"Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal" may ask to be adjudged a bankrupt. Radford was adjudged a bankrupt in accordance with this provision.

The farmer thus adjudged a bankrupt may, at the

time of the first hearing, petition the court that all of his property, whether pledged, encumbered, or unencumbered, by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of any part or parcel or all of the remainder of his property and pay for the same under the terms and conditions set forth in this subsection (s).

The property of the farmer is then appraised. The details of this procedure are a controversial issue and will be adverted to in the course of the brief.

Paragraph (2) of subdivision (s) of the Section provides:

> "(2) After the value of the debtor's property shall have been fixed by the appraisal as herein provided, the referee shall issue an order setting aside to such debtor his exemptions as prescribed by the State law, subject to any existing mortgages or liens upon any such exemptions to an amount equal to the value, as fixed by the appraisal, of the value of such exempt property as is covered by any mortgage or lien, and shall further order that the possession, under the control of the court, of any part or parcel or all of the remainder of the debtor's property, shall remain in the debtor subject to a general lien, as security for the payment of the value thereof to the trustee of the creditors, if a trustee is appointed, such a lien to be subject to and inferior to all prior liens, pledges, or encumbrances. Such prior liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such prior liens, pledges, or encumbrances shall be subject to the payments of the claims of the secured creditors holding such prior liens, pledges, or encumbrances up to the actual value of the property as fixed by the appraisal provided for herein. All liens herein on livestock shall cover all increase, and all liens on real property shall cover all rental received or crops grown thereon by the debtor, as security for

the payment of any sum that may be due or past due under the terms and provisions of the next paragraph, until the full value of any such particular property has been paid."

Under the general provisions of National Bankruptcy Law (Section 70), upon adjudication, the title to the property of the bankrupt, with certain exceptions immaterial in the proceeding under review herein, passes to the trustee in bankruptcy.

Under paragraphs 3-6, Subdivision (s), Section 75, the trustee "with the consent of the lienholder or lienholders", is required to sell to the farmer, the land of the farmer on the terms therein prescribed. The lienholder in the proceeding under review herein did not actively or affirmatively consent to such sale, hence these paragraphs were not regarded as operative in the proceeding under review herein.

Paragraph (7) of the Subdivision (s) of Section 75 is the storm center of the controversy arising in the proceeding under review herein. The successive provisions of this paragraph may be thus analyzed, as applied to the proceedings under review herein:

(1) Provision is made: "If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of (the) debtor's property, as herein provided for * * * *," then certain steps are required to be taken. Such objections were filed in the proceedings under review herein.

(2) The next provision is that "the court, after having set aside the debtor's exemptions, as prescribed by the State law, shall stay all proceedings for a period of five years." The prescribed steps were taken in the proceedings under review herein.

(3) During the five years period just mentioned, "the debtor shall retain possession of all or any part of his property under the control of the court." Radford is accordingly still in possession of the farm in controversy in the proceeding under review herein.

(4) The retention of possession of his property by a debtor as just stated is predicated of the proviso that the debtor "pay a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the order staying proceedings." The referee (and his order was approved by the District Court), fixed the rental to be paid as just mentioned in the proviso quoted. The payment of such rental has not yet become due.

(5) The rental, when paid, is "to be distributed among the secured and unsecured creditors, as their interests may appear; under the provisions of this Act."

(6) Next it is provided:

> "At the end of five years, or prior thereto, the debtor may pay into court the appraisal price of the property of which he retains possession: Provided, That upon request of any lien holder on real estate, the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: *Provided, however,* That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.
>
> "If the debtor fails to comply with the provisions of this subsection, the court may order the

trustee to sell the property as provided in this Act."

Radford has not at this time paid into Court any part of the appraised price of the property in controversy in the proceeding under review herein, or sought to reacquire the title to his land.

BRIEF AND ARGUMENT

I

THE ALLEGED DERELICTIONS OF RADFORD DO NOT DEPRIVE HIM OF RELIEF AS A DEBTOR UNDER THE ACT OF CONGRESS ON WHICH THIS PROCEEDING IS BASED.

As to the alleged derelictions of Radford, elaborated in the answer (Rec., pp. 41-43), and repeated in the brief filed in the District Court:

Section 75, National Bankruptcy Act, enacted March 3, 1933, gives "any farmer" the right to avail himself of its benefits. The same is true of paragraph 7 of the Frazier-Lemke Act.

The operation of neither Act is dependent upon the previous good conduct of the farmer. The Acts cited are not punitive and are not enacted as a reward for good behavior. They are enacted in the interest of the public welfare and to protect a man in the possession of his farm, not because of his good behavior, but because it is to the public interest a farmer be enabled to stay on the farm and not become a public charge.

A creditor cannot object to a voluntary proceeding in bankruptcy and an adjudication therein.

> "* * * a creditor has in no case a right to maintain a petition to vacate an adjudication of bankruptcy made in a voluntary proceeding."
>
> *In re Wagy & Co. (Inc.)*, 22 Fed. (2d) 9; 11 A. B. R. (N. S.) 95, 98 (9 C. C. A.).
>
> *In re Ives* (6 C. C. A.), 113 Fed. 911, 7 A. B. R. 692.
>
> *In re Ann Arbor Mach. Corp.* (6 C. C. A.), 274 Fed. 24, 48 A. B. R. 60.

2 *Collier on Bankruptcy* (13 Ed.), p. 1209, note 14.

1 *Remington on Bankruptcy* (4 Ed.), Secs. 49, 208.

Royal Indemnity Co. v. American Bond & Mortgage Co., 289 U. S. 165, note, 171.

Two grounds alleged against Radford seem worthy of special note:

(a) It is claimed Radford cannot save his farm because he was not willing to lose it by conveying it to the lienholder. As to this ground, we may well say, Res ipsa loquitor.

(b) It is claimed Radford should have refinanced his mortgage indebtedness to the lienholder by applying for a loan to Federal Land Bank, Louisville, Kentucky. In this connection there is neither pleading nor proof that if Radford had applied to the bank mentioned, he would have been able to borrow any amount, nor that if he had, the lienholder in the proceeding herein would have accepted the amount so borrowed in discharge of its debt.

The District Court in the proceedings at bar paid no attention to the alleged derelictions of Radford now under discussion. Counsel for the lienholder did not resurrect this point in the brief filed by them in the Circuit Court of Appeals. At this writing, counsel for the debtor has not been served with the brief to be filed for the lienholder in this Court. So this point is answered by counsel for debtor in an anticipatory mood and by way of precaution.

II

THE VALIDITY OF SECTION 75 DOES NOT DEPEND UPON THE APPOINTMENT OF A CONCILIATION COMMISSIONER.

Counsel for the lienholder, in the brief filed in the District Court attacked the validity of Section 75, as enacted March 3, 1933, and of which Frazier-Lemke Act is a part, by claiming that the operation of Section 75 depends upon the appointment of Conciliation Commissioners and hence is void.

Judge Dawson did not pass on this question in the District Court. The point was not made in the Circuit Court of Appeals.

The Act of June 7, 1934, (Section 8), made the appointment of Conciliation Commissioners obligatory upon the District Court.

But assuming that an Act unconstitutional in its entirety cannot be cured by amending it in part, but only by re-enacting it in its entirety, let us examine Section 75, as enacted March 3, 1933.

Subdivision (a) of the section provides for the appointment of conciliation commissioners in the circumstances stated. But the life and purpose of the law is not the appointment of conciliation commissioners. The Act provides for a new chapter entitled "Provisions for the Relief of Debtors" (47 Stat. at Large, p. 1467). The jurisdiction to be exercised thereunder is "for the relief of debtors."

If it be decided that Subdivision (a) of Section 75, enacted March 3, 1933, is void for the reason stated by counsel in the District Court, what becomes of the remainder of the law?

A law may be valid in part and invalid in part, provided:

(a) The exorcised part is not an essential element to the operative force and effect of the part not exorcised.

(b) It appears that Congress would have enacted the law independently of the unconstitutional part.

Part of a statute may be void and the remainder be valid.

Eilenbecker v. District Court, 134 U. S. 31.

If one part of a statute is valid and another invalid, the former may be enforced if not so connected with or dependent on the other as to make it clear that the Legislature would not have passed that part without the part that may be deemed invalid.

Southwestern Oil Co. v. Texas, 217 U. S. 114.

Assuming that clause (a) is out of the law, we begin with clause (b). The farmer is required to pay $10 "to be transmitted to the clerk of the court and paid into the treasury." The existence of a conciliation commissioner is not essential to the operation of this provision.

The remainder of this clause relates to conciliation commissioners and may be omitted on the theory that clause (a) is exorcised.

Subdivision (c) relates to the filing of a petition by a farmer:

> "At any time within five years after March 3, 1933, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to

effect a composition or an extension of time to pay his debts."

It is true such petition may be received by a conciliation commissioner, but suppose there is none appointed under a valid law? Then the farmer may file his petition with the clerk.

The operation of clause (c) of Section 75 giving a farmer the right to file a petition is not dependent upon the appointment of a conciliation commissioner.

It is true under Subdivision (e), a conciliation commissioner is required to call a first meeting of creditors.

But under the general law on the subject of bankruptcies (Section 55), the Court, which by definition (Section 1), may include the referee (286 U. S. 269), "shall cause the first meeting of creditors to be held."

Section 38 of the law provides:

> "Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy."

Under Subdivision (a) of Section 75, a court may appoint "for such county one or more referees to be known as conciliation commissioners."

See General Order No. 50, par. 1.

So if Section 75 be void in so far as it provides for conciliation commissioners, the general law providing for referees in bankruptcy still protects the situation.

Subdivision (f) as to inventories may be void, in the absence of a conciliation commissioner and the law still be operative, because the Court would have power to have an appraisement made.

Subdivision (g) does not mention the conciliation commissioner. Nor does (h) and (i). All of these sections may operate through court action in the ab-

sence of such an official. The same is true of Subdivisions (j), (k), (l), (m), and (n).

If we take the conciliation commissioner out of (o), the power of the Court remains.

Subdivisions (p) and (r) do not mention the conciliation commissioner. And if a farmer can do without a conciliation commissioner if Subdivision (q) be eliminated.

Although the Frazier-Lemke Act purports to be an amendment of Section 75, approved March 3, 1933, the life of the Frazier-Lemke Amendment is not dependent upon the life of the rest of Section 75, and may exist without it.

The Frazier-Lemke Act begins by permitting a farmer, in the circumstances stated, to "amend his petition or answer, asking to be adjudged a bankrupt."

The entry of such judgment does not depend upon the existence of a conciliation commissioner.

The next provision relates to proceedings "at the first hearing." This may mean the first meeting of creditors. That meeting, if there be no conciliation commissioners, may be held by a referee.

Paragraph 1 does not mention the conciliation commissioner. Appraisers are to be appointed but the appointing power is not specified. Hence, the appointment may be by the Court in the exercise of its inherent power to administer the law. The Court may by special order or general rule vest this power in a conciliation commissioner. The Court, however, if there be no such officer, may discharge this function either by its own action or through a designated representative.

Paragraph 2, in the second line, uses the word "referee." Inasmuch as a conciliation commissioner, if appointed, is in effect a referee (see Section 1, Act of

March 3, 1933), the word "referee" as used in the paragraph mentioned evidently means a "conciliation commissioner," and should be so interpreted.

But if there be no conciliation commissioner, then the word "referee" stands alone and needs no interpretation.

Paragraphs 2, 3, 4, 5, and 6 constitute, construed together, a scheme of purchase, dependent for its operative force and effect upon the consent of the lienholder and may be wholly disregarded, so far as this proceeding is concerned.

This brings us to paragraph 7, in which the words "conciliation commissioner" do not appear. The word "court" is used. The word mentioned, under Section 1 of the Act, "may include a referee." A conciliation commissioner, if existent, is in effect, a referee (Section 1, Act March 3, 1933).

General Order No. 50, last paragraph.

But if no conciliation commissioner exists, all the powers prescribed in paragraph 7 of the Frazier-Lemke Act may be exercised by the Court, that is, the Judge, or per his order, by a referee in bankruptcy.

The conciliation commissioner was appointed for the convenience of the farmer and to reduce expense of administration. The absence of this convenience should not destroy the substantive relief which is the essence and life of the law.

III

THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES HAS NO BEARING ON THE PROCEEDING UNDER REVIEW HEREIN.

It may be conceded, as counsel for the lienholder

contended in the Circuit Court of Appeals, that "the Federal Government is one of delegated powers", that the sole authority of Congress to enact the Frazier-Lemke Act is predicated of the Constitution (Art. I, Sec. 8): The Congress shall have power "to establish * * * uniform laws on the subject of bankruptcies throughout the United States," and that if the Frazier-Lemke Act is not such a law, it is void.

The question then remains (discussed infra), what is a uniform law on the subject of bankruptcies throughout the United States, and does the Frazier-Lemke Act measure to that standard?

For, when a power is found to be one delegated to Congress, the law-making body is not in the exercise of its power "cabin'd, crib'd, confin'd," but the power is rather as "broad and gentle as the cas'ing air."

In 1 Rose's Notes, page 871, the following statements are extracted from *McCulloch v. Maryland*, 4 Wheat. 316:

(a) The United States Government is one of enumerated powers; it can exercise only the powers granted to it by the Constitution.

(b) In order to carry into execution the powers granted by the Constitution, Congress may employ those means in its judgment the most advantageous. Where such means are really calculated to effect the object entrusted to Congress, the courts cannot inquire into their necessity.

McCulloch v. *Maryland* is a landmark in the course of the judicial unfoldment of the doctrine of delegated powers. That case upheld the power of Congress to establish a bank, although the word "bank" does not appear in the Constitution. The strict constructionists

of the Constitution were, have been, and no doubt, will continue to be, loud and long in their protestations that the people did not delegate to Congress the power to establish a bank, but the fact remains, had *McCulloch v. Maryland* been decided otherwise, Louisville Joint Stock Land Bank would not be in existence.

How did the Court, in *McCulloch v. Maryland*, discover the existence of the constitutional power of Congress in the establishment of a bank? By this statement:

> "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."
>
> *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (Marshall, C. J.).

The debtor in this case asks at the hands of this Court, in the determination of his legal rights, the same principle which guided the Supreme Court aright in unfolding the genesis of the lienholder in the case cited.

IV

A UNIFORM LAW ON THE SUBJECT OF BANKRUPTCIES ENACTED BY CONGRESS UNDER ITS CONSTITUTIONAL GRANT OF POWER IS NOT LIMITED TO A SALE OF ASSETS, A DISTRIBUTION OF THE PROCEEDS THEREOF, AND A DISPOSSESSION OF THE DEBTOR. A VALID LAW ON THE SUBJECT MENTIONED MAY INCLUDE REASONABLE PROVISIONS FOR A MORATORIUM TO THE DEBTOR AND A RE-

PURCHASE BY HIM OF PROPERTY A PART OF THE ESTATE IN BANKRUPTCY.

The underlying question in this case may be thus stated:

What is a uniform law on the subject of bankruptcies throughout the United States?

Counsel for the lienholder undertook in the District Court to answer the question just outlined in this wise:

A law on the subject of bankruptcies in the United States in the year 1934 must in effect be a replica of the bankruptcy laws in effect in England in the year 1789, the date of the adoption of the Constitution, and inasmuch as those laws did not permit a voluntary proceeding in bankruptcy, were limited in their scope to traders, and contemplated only a sale of assets and a distribution of proceeds, with no right to a discharge without the consent of creditors and no provision for a composition, the Act of March 3, 1933, plus the Acts of June 7, 1934, (Corporate Reorganization Act), and June 28, 1934, (Frazier-Lemke Act), are void.

It is true, as a matter of historical accuracy, that the bankruptcy laws in force in England in 1789 did not permit voluntary proceedings and were limited in their operation to traders.

Hanover National Bank v. Moyses, 186 U. S. 181, 184, 185.
Adams v. Storey, 66 Fed. Cas. 66.
In re Klein, Fed. Cas. 7866.
Friday v. Hall & Kane Co., 216 U. S. 449.
1 *Remington on Bankruptcy*, (3 Ed.), p. 1.
Leidigh Carriage Co. v. Stengel (6 C. C. A.), 95 Fed. 647.
Section 1, *National Bankruptcy Act*, 11 U. S. C. A., p. 4, Section 1 and note.

But in *Hanover National Bank v. Moyses*, 186 U. S.

181, Moyses had been sued in Tennessee on a judgment recovered in Mississippi. Moyses filed a voluntary petition in bankruptcy and was granted a discharge from his debts. The validity of the proceedings in bankruptcy was challenged *inter alia* on the ground that the National Bankruptcy Act of 1898 included voluntary proceedings and was not limited to involuntary proceedings against traders and hence invalid. This contention was denied by the Supreme Court of the United States. Attention was called to the fact that Mr. Justice Livingston had expressed a doubt "whether an act of Congress subjecting to such a (bankruptcy) law every description of persons within the United States" would have been valid (186 U. S. 184).

The Supreme Court said: "But this doubt was resolved otherwise," and called attention to the fact that the several bankruptcy laws passed in 1841, 1867 and 1898, respectively, provided for voluntary proceedings and extended to persons other than merchants or traders (186 U. S. 184).

The Supreme Court, in the case just cited, quoted approvingly Mr. Justice Story, in his Commentaries on the Constitution, to the effect that the fact that the English bankruptcy laws applied only to traders "was a mere matter of policy, and by no means enters into the nature of such laws" (186 U. S. 185).

In re Landquist (7 C. C. A.), 70 Fed. (2d) 729, is an elaborate opinion, to be read in its entirety, upholding the constitutionality of Section 74, Act March 3, 1933. By a parity of reasoning, Section 75 of the same Act, including Frazier-Lemke Amendment, is likewise constitutional.

In re Landquist, supra, the Court ruled that the object of our laws upon the subject of bankruptcies "for

more than ninety years at least, has been the benefit and relief of creditors and debtors in cases where the debtors are unable to pay their debts, and the Constitution is sufficiently broad to accomplish this purpose, so long as the means are uniform in their application."

Counsel for the lienholder, in their brief in the District Court, referred to *In re Landquist, supra*, and attempted to distinguish that case from the one at bar, by arguing that while Section 74, Act March 3, 1933, may be constitutional, Section 75 of the Act, of which Frazier-Lemke Act is a part, is not constitutional. It was claimed that inasmuch as "Section 74 requires only such extension and composition as is agreed to by a majority in number of creditors representing a majority in amount of claims, * * * " then an extension granted without the consent of a minority of the creditors does not deprive such a minority of their rights." But if Congress may extend the time of payment of a debt without the consent of one or more creditors (that is, the minority), why may Congress not extend the time for the payment of a debt without the consent of any creditor? The difference is one of degree, not of kind, involving legislative discretion, not constitutional rights.

In re Chicago, Rock Island & Pacific Ry. Co. (7 C. C. A.) 72 Fed. (2d) 443, the court said:

> "Under the Federal Constitution, Congress 'is authorized to enact such bankruptcy legislation as it may deem wise and appropriate. The constitutional grant of authority is not conditional nor limited,' save as to uniformity."

The Court continued:

> "Congress, having the express authority to enact legislation on the subject matter of bankruptcy, was the sole judge of the means and their appro-

priateness to the purpose of the legislation so long as said means did no violence to the Constitution."

In the Rock Island case just cited, the Court referred to "* * * legislation which deals with the subject of bankruptcy, that is, legislation for the relief of debtors and creditors."

The Court referred to Section 77, relating to a reorganization of railroads, and stated that it (the section) "calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced), so that the debtor may live * * *."

The Court continued:

> "The Court violated no right of the appellants of which they could complain when it temporarily stayed the enforcement of their remedy arising out of the pledge of the collateral.
>
> "As to the constitutionality of Section 77 of the Bankruptcy Act, little need be said in addition to what has already been stated, to show this objection is untenable. If the order assailed deals merely with the remedy, as we hold it does, then the amendments violate no provision of the Constitution. That such restraining orders affect the remedy only, see *Allebach v. Thomas,* 16 F. (2d) 853. Likewise, legislation which deals with the subject of bankruptcy, that is, legislation for the benefit and relief of creditors and debtors,—is not subject to the same constitutional limitations as legislation which deals with other subjects and which affects contractual rights and obligations of debtors and creditors. The grant of power 'to establish * * * uniform laws on the subject of bankruptcy' was necessarily a grant of power, the exercise of which would impair the obligation of contracts. For legislation on the subject of bankruptcy, contemplates a discharge of the debtor's debts—which is an impairment of contractual obligations. *Hanover National Bank v. Moyses,* 186 U. S. 181."

Judge Wells' opinion (Fed. Cas. 7866) undertook to criticize Mr. Justice Story's Commentaries on the Constitution, who had said: "* * * a law on the subject of bankruptcies, in the sense of the Constitution, is a law making provision for cases of persons failing to pay their debts" (14 Fed. Cas. p. 727).

But Judge Wells was reversed on appeal to the Circuit Court where Mr. Justice Catron (*In re Klein*, Fed. Cas. 7865), "held the bankrupt act of 1841 to be constitutional, although it was not restricted to traders, and allowed the debtor to avail himself of the act on his own petition, differing in these particulars from the English acts" (186 U. S. 186).

The opinion of Mr. Justice Catron, and especially the syllabi thereto, should be read in its entirety.

Bankruptcy laws "are not confined in their operation to the same class of persons nor to the same methods of procedure prevailing on the subject of bankruptcies 'when the Constitution was adopted'."

1 *Remington on Bankruptcy* (3 Ed.), p. 29.
Section 1, *National Bankruptcy Act*, 11 U. S. C. A., Sec. 1, p. 6, note 6.
Loveland on Bankruptcy (3 9d.), p. 17.

In re Jackson, Fed. Cas. 7124 (Blatchford, D. J., afterward Mr. Justice Blatchford): Congress has power in passing bankruptcy laws "to enact any and all forms of legislation tending to promote the distribution of an insolvent's estate among his creditors and his discharge from their demands," so long as such laws are uniform.

Section 1, *National Bankruptcy Law*, 11 U. S. C. A. Sec. 1, p. 4, note.

"The subject of bankruptcies comprehends every phase of the relations between an insolvent or non-pay-

ing or fraudulent debtor and his creditors, extending to his or their relief." (6 C. C. A., Simons, J., Rec., p. 107.)

Kunzler v. *Kohaus*, 5 Hill (N. Y. 317), an exhaustive discussion by Cowen, J., concurred in by Nelson, J., afterward Mr. Justice Nelson, decided *inter alia*: "The power conferred is without restriction save in its uniformity. It is plenary and in reference to its subject may be exercised with the same latitude as the like power has been or may be exercised by the British Parliament," (5 Hill, 326), citing Chancellor Kent.

As to the plenary nature of the grant of power to Congress by the Constitution to enact uniform laws on the subject of bankruptcies, consult:

In re F. A. Hall Co., 121 Fed. 992 (Referee Munn, affirmed by Platt, District Judge).
Hurley v. *Devlin*, 151 Fed. 919, 921.
Silverman's Case, Fed. Cas. 12855.

In re Reiman, Fed. Cas. 11673, (Blatchford, then District Judge); affirmed, per Mr. Justice Hunt, 20 Fed. Cas. 501, who observed:

> "The argument, that the subject of bankruptcies is to be interpreted and limited by the British and colonial statutes, as they existed at the time of the separation of this country from Great Britain, is quite too narrow. No country can afford to be thus cut off from all possible improvement in its legislation."

See also, In re California Pac. R. Co., Fed. Cas. 2315 (Exhaustive discussion);

United States v. *Pusey*, Fed. Cas. 16098, in which the Court ruled:

> "A very compact and pointed description, or

> definition of a bankrupt law occurs in the debates on a bankrupt bill in the house of representatives in eighteen hundred and eighteen. It was there said: 'Perhaps as satisfactory description of a bankrupt law as can be framed is, that it is a law for the benefit and relief of creditors and their debtors, in cases in which the latter are unable or unwilling to pay their debts. And a law on the subject of bankruptcies in the sense of the constitution, is a law making provision for cases of persons failing to pay their debts.' 4 Elliott, Deb. 282. The 'subject of bankruptcy', in a general sense, concerns the relation of debtor and creditor, and in a particular and, no doubt, stricter sense, concerns such relation in cases where the debtor is unwilling or unable to pay his debts."

The Court further observed that the expression, "subject of bankruptcies", as used in the constitution, "in a general sense, * * * concerns the relation of debtor and creditor * * *. True, the expression has a limited signification, that is, that it concerns the relation of debtor and creditor in cases where the debtor is unable or unwilling to pay his debts * * *" (27 Fed, Cas. 633).

> 1 *Collier on Bankruptcy*, (13 Ed.), p. 8.
> *Loveland on Bankruptcy*, (3 Ed.), p. 19.
> 7 *Corpus Juris*, p. 19, Sec. 9.

Speaking of the power of Congress with respect to the enactment of a uniform law on the subject of bankruptcies, the Supreme Court has said:

> "Congress may prescribe any regulations concerning a discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law" (186 U. S. 192).

Congress has the plenary power to pass a uniform law on the subject of bankruptcies. Hence Congress

may pass a law on that subject in any form it chooses, so long as the law passed is uniform, and not unreasonable.

The attention of the Court is called to a definition of a bankruptcy law "in modern legal significance" (7 Corpus Juris, p. 17, Section 1) and to the objects of such a law (3 Ruling Case Law, pp. 309, 310).

See, also, 7 *Corpus Juris,* p. 19 Section 10.

An insolvent law has been defined to be: "* * * a positive regulation made by the legislature to exonerate the person or property of a debtor and to relieve him from the pressure of debts" (32 Corpus Juris, p. 811, Section 5).

And "a bankrupt law may contain those regulations which are generally found in insolvent laws" (186 U. S. 185, 186).

Hence, a bankrupt law may exonerate the person or property of a debtor and discharge him from the payment of his debts.

> "It has long been the policy of the law to protect debtors who are unable to pay all of their obligations, to the extent that certain property shall not be subject to levy or seizure under execution. Provisions to this effect may be found in the statutes of the several states."

12 *Modern American Law,* p. 281.

In the proceeding at bar, the Circuit Court of Appeals said of the opinion of Mr. Justice Catron, *In re Klein,* reported in the note to *Nelson* v. *Carland,* 1 How. 265, 277 (Rec., pp. 104, 105): "Whether the limits drawn by Mr. Justice Catron mark the ultimate of the modern concept of bankruptcy it is not necessary to decide, for

they are sufficient for present purposes. It has been said that distribution of property is the principal object to be attained and that the discharge of the debtor is merely incidental * * * but this but illustrates the historical development of bankruptcy legislation."

> "The term 'bankruptcy' originally was used to denote the condition of a trader or a merchant who was unable to pay his debts in the due course of business" (to which may be added, and who had committed a statutory act of bankruptcy.)
>
> "* * * insolvent laws were originally intended to discharge the person of the debtor from arrest or imprisonment. His future acquisitions are still subject to the demands of his creditors."
>
> "Bankruptcy laws discharge absolutely the debtor and the debt."
>
> "* * * a bankruptcy law may contain provisions generally applicable to insolvent laws and insolvent laws embrace many of the essentials of bankruptcy laws."

12 *Modern American Law*, p. 263.

In considering the power of Congress to enact uniform laws on the subject of bankruptcies, the following should be considered:

> "When the Constitution was adopted the English law divided the general subject into two parts, insolvency and bankruptcy; which were administered by different courts, and to some extent upon different principles. The insolvent law was applied to persons who were imprisoned for debt, and who asked for a discharge from prison upon a surrender of all their property; the bankrupt law was applied only to traders, and always upon the suit of their creditors against them—never upon the application of the debtors. It was strenuously insisted in Congress in 1840, that the word 'bankruptcies' in the Constitution was to be understood in a technical sense, and that the legislature

had no power to provide a system of bankruptcy for persons who were not traders, nor to permit debtors to begin the proceedings upon their own voluntary petition. This opinion has not prevailed, either in Congress or in the courts. It is now fully established that the grant of power is broad enough to permit Congress to provide for the settlement of the affairs of all insolvent debtors." (John Lowell.) 1 Cyclopedia of Political Science (Maynard, Merril & Co.) p. 223.

"In strictness, 'bankrupt' laws apply only to traders or merchants, and 'insolvent' laws to all other persons." Anderson's Law Dictionary, p. 553; see also p. 107.

Black's Law Dictionary, p. 118.
1 *Bouvier's Law Dictionary*, (Third Revision by Francis Rawle), pp. 320 *et seq.*
1 *Words and Phrases* (1st Ed.), pp. 701, 702 and cases cit.

In construing National Bankruptcy Law, no distinction is made between so-called insolvency laws and so-called bankruptcy laws.

Hanover National Bank v. *Moyses*, 186 U. S. 181, 184, 185.
Sturges v. *Crowinshield*, 4 Wheat. 122, 195.

The formation of the Constitution of the United States of America was the result of a compromise of conflicting views and the balancing of interests. As was pointed out in *The Minnesota Mortgage Moratorium Case*, (290 U. S. 348), some of the states were classified as debtor states and some as creditor states. The creditor states were naturally fearful that if the debtor states exercised the inherent plenary power of government to cancel debts, as immemorial as Deut. 15: 1, the debtor states would probably cancel the debts owing by the inhabitants of the debtor states to the inhabitants

of the creditor states. To ally these fears, a prohibition was inserted in the Federal Constitution which forbade a State to impair the obligation of a contract. As a result of this constitutional provision, a State may not, even in the absence of congressional legislation pass a bankruptcy law which impairs the obligation of a previously executed contract, nor which attempts to discharge a debt due a non-resident of the State who does not become a party to the proceeding in bankruptcy.

Sturges v. *Crowninshield*, 4 Wheat. 122.

At the same time, the constitutional convention recognized that laws on the subject of bankruptcies had been an integral element of every civilized system of jurisprudence for centuries. Man is naturally optimistic. He indulges in the expectations of hope and often becomes a capitalist by way of anticipation rather than by way of realization. In other words, through a change in economic conditions, individuals often find themselves indebted far beyond their apparent ability to pay. In such circumstances, burdened with a debt which is unpayable and which would be inescapable, in the absence of a law permitting a discharge of the obligation thereof, the activities of individuals are seemingly paralyzed and finding themselves unable to pay their debts in full, insolvents make no effort to pay any portion at all of their outstanding obligations. Often such a condition of thought results from the fact that an extension of credit is important to the transaction of business. Insolvents are not usually extended credit. Hence they find themselves unable to engage in business.

In such an emergency, the wisdom of economics

touches us, it is better for a man to pay part of his debts and again become an active member of society, instead of paying no part of his debts and not doing his part in the restoration of prosperity to a debt ridden nation.

Hence the several states agreed that the power to establish a uniform law on the subject of bankruptcies should continue to be existent as a part of our governmental structure, but should be vested in Congress. The prohibition against the impairment of the obligation of a contract was not extended in the Constitution to include an act of Congress. (186 U. S. 186)

> "'No state shall pass any law impairing the obligation of contracts.' This provision was inserted in the Constitution without little debate, and undoubtedly for the purpose of preventing the states from passing laws repudiating private debts, a form of legislation which had proved popular in some of the states in the period of quasi anarchy that followed the revolution."
>
> 6 *Page on Contracts* (2nd. Ed.), sec. 3635, p. 6295.

> "By terms, this clause of the Constitution provides that no state shall pass the laws in question. It does not therefore, restrict the power of the United States government. If in the exercise of its authority the United States passes an act otherwise constitutional which impairs the obligation of contracts, such act is not on that account objectionable. A federal bankruptcy act which discharges debts existing before its passage . . . (is) valid."
>
> 6 *Ib.*, sec. 3636, pp. 6296, 6297.
> See *The Gold Cases*, decided March 4, 1935; also 7 Fed. Supp 1.
> *In re Jacobs*, 7 Fed. Supp. 749.

It is well settled that our Constitution is a practical instrument designed to accomplish a practical

result. The power to cancel debts has existed, as previously herein stated, for centuries. Great minds such as Mr. Chief Justice Marshall, Mr. Chief Justice Fuller, Mr. Justice Story, and Mr. Justice Catron, reached the conclusion that the power to establish a uniform law on the subject of bankruptcies carried with it as an incident the power to cancel every obligation, by way of debt, arising out of contract. If these jurists had limited the power of Congress in the establishment of a uniform law on the subject of bankruptcies, to the type of such laws prevailing in England in 1789, a debtor could never have cancelled the obligation of a debt, unless a creditor saw fit to place the debtor in bankruptcy. In such case the debtor would be allowed only a limited right of discharge from his debts. Hence in the exercise of that judicial wisdom, which is characteristic of their careers, these eminent jurists, two of them speaking for this Court (4 Wheat. 122; 186 U. S. 186), construed the power to establish uniform laws on the subject of bankruptcies to include every form of legislation incident to the relation of debtor and creditor. (Rec., p. 407.)

At this writing, (March 27, 1935), counsel for the petitioner have not served their brief in this Court upon the counsel for the respondent. So far as counsel for respondent are advised, that brief is still in transit. Hence counsel for respondent are compelled to assume that many, if not all, of the points made by the lienholder in the District Court and in the United States Circuit Court of Appeals will be restated in this Court and shall act accordingly.

CERTAIN OBJECTIONS OF LIEN HOLDER

DISTRIBUTION

The counsel for the lienholder in the brief filed in

the District Court stressed the thought of "distribution." We quote: "The cardinal element of laws on the subject of bankruptcies within the meaning of the Constitution is the distribution of an insolvent debtor's assets among his creditors."

From the use of the definite article "the" and the maxim, the expression of one is the exclusion of another, it would seem counsel were of the opinion that the subject of bankruptcies connoted the subject of distribution; "only that and nothing more."

But in the brief in the Circuit Court of Appeals, counsel said:

> "Judge Dawson correctly stated that: 'A fundamental essential of all bankruptcy laws under the Constitution is the reasonably prompt distribution among his creditors of the value of the property of the debtor unable or unwilling to pay his debts.'"

Here we have the indefinite article "a", an abandonment of the maxim quoted, and a recognition of a distribution "of the value of the property of the debtor," as an element, merely, of a bankruptcy law.

Indeed property until converted into money is incapable of being distributed in a proceeding in bankruptcy.

It should be remembered (a) The lienholder in the proceeding at bar is not asking for a distribution of the value of the debtor's property. The lienholder is seeking to apply the proceeds of the sale of debtor's farm to the payment in full of its mortgage thereon. (b) In the District Court, counsel for lienholder stated their concept of a law on the subject of bankruptcies in this wise:

> "At the time of the adoption of the Constitution

of the United States, bankruptcy was limited to involuntary proceedings, primarily for fraud against persons engaged in commerce, i. e., traders, brokers, and merchants. Their property was seized for the benefit of, and distributed ratably among their creditors. Voluntary proceedings were unknown. Discharge from their debts was only granted if their assets were sufficient to pay a certain percentage of their debts (Remington on Bankruptcy, 4th Ed., Vol. I, p. 12.)"

Quotation was made from the Federalist, to which was added:

"Inferentially this statement indicates the bankruptcy power was granted to Congress to prevent commercial frauds."

Counsel however did not claim, in exact words, that the prevention "of commercial frauds" was the only purpose of a law on the subject of bankruptcies under the Federal Constitution. A power declared to be "plenary" is not subject to such a limitation.

Counsel then admitted: "Be that as it may, the Supreme Court soon indicated that it was proper to incorporate in bankruptcy laws certain elements of bankruptcy laws (Sturgis v. Crowninshield, 4 Wheat 122), and voluntary proceedings and discharge of honest debtors, upon turning over all their assets for distribution among their creditors have become accepted as legitimate provisions of bankruptcy laws."

The portion of the brief in the District Court from which we have just quoted was revised in the Circuit Court of Appeals to read: "Without attempting to state the scope of bankruptcy laws in England at the time of the adoption of the Constitution," (Citing historical references), "it is sufficient to say that the term 'bankruptcy' is not to be given a technical and rigid

meaning confined to the content of the laws of England existing when the Constitution was adopted."

Why this concession? Because counsel for the lienholder discovered that under the laws of England existing when the Constitution was adopted, the payment of secured claims in full was not contemplated as an element in a law on the subject of bankruptcy. Traders to whom the English laws were limited, were not expected to owe secured debts.

Counsel then, in the brief filed in the Circuit Court of Appeals, continued:

> "In the four separate bankruptcy acts (1800, 1841, 1867, and 1898) and the amendments thereto, Congress has (1) widened the class of persons to which bankruptcy laws apply, (2) liberalized the provisions for discharging debtors from their obligations, (3) authorized voluntary as well as involuntary proceedings, and (4) authorized 'compositions' between the debtor and his creditors, which under certain conditions are made binding on a minority of non-assenting creditors."

But if Congress may "widen" and "liberalize" such laws between 1789 and 1933, as counsel for lienholder have conceded, why stop on March 1, 1933?

In the District Court, counsel for the lienholder cited *United States* v. *Fox*, 95 U. S. 670. Fox was indicted for violating a criminal statute relating to the subject of bankruptcies. The Court said of Congress:

> "And as it is authorized 'to establish uniform laws on the subject of bankruptcies throughout the United States,' it may embrace within its legislation whatever may be deemed important to a complete and effective bankrupt system." (672.)

Counsel for the lienholder also cited the opinion in the *Fox* case to the effect (italicized by counsel):

"*The distribution of the property is the principal object to be obtained,*" but in the *Fox case*, the court did not prescribe outlines limiting Congressional action; (consult opinion Judge Simons, Rec. p. 105; "* * * this but illustrates the historical development of bankruptcy legislation.'"

> "It is quite obvious that much of the difference of opinion with respect to the meanings of the word (bankruptcy) has been occasioned by trying to define it in terms of past legislation rather than by the root meaning of the word and the broad terms of the Constitution * * * where plenary power is given by the Constitution, and Congress sees fit to use only a part of it, that fact will not prevent Congress from exercising the full power whenever it chooses to do so."
>
> *In re Landquist*, 70 Fed. (2d) 929, 932, 933.
> Also, *Home Bldg., etc. v. Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 252.
> *Norman v. B. & O.*, 55 S. Ct. 407.

Curiously, counsel for the lienholder, in the proceeding at bar, both in the brief in the District Court and in the Circuit Court of Appeals, referred to *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 186, and to the citation therein of *In re Klein*, 1 How. 277 (note.) In view of the reliance placed upon these two cases respectively by Judge Dawson and the Circuit Court of Appeals in the proceeding at bar (Rec. pp. 54, 55, 104, 107), it is somewhat difficult to understand what consolation counsel for the lienholder derives therefrom. Perhaps the word "distribution" attracts their attention. But, as has already been shown, the lienholder in the proceeding at bar has not asked for "distribution."

In *Nelson* v. *Carland*, 1 How. 265, 274, a dissenting opinion was filed by Mr. Justice Catron. The learned

jurist quoted from an opinion by Wells, District Judge (In re Klein, Fed. Cas. 7868), which Mr. Justice Catron had reversed on appeal to the Circuit Court. (In re Klein, Fed. Cas. 7869). Both in the District Court and in the Circuit Court of Appeals, counsel for the lienholder quoted Judge Wells' overruled opinion as a part of Mr. Justice Catron's opinion.

The contention of the lienholder in the District Court, repeated in the brief in the Circuit Court of Appeals:

> "* * * any law to be a law on 'the subject of bankruptcies' must provide for the speedy and ratable distribution of a debtor's assets among his creditors."

is answered by the opinion of the Circuit Court of Appeals. (Rec. p. 104)

In the Circuit Court of Appeals, counsel for the lienholder contended:

> "The Frazier Lemke Act does not provide for a reasonably prompt distribution to creditors of the value of debtor's property."

As to this, consult, Rec. p. 104.

Counsel for the lienholder contended in the Circuit Court of Appeals:

> "Laws which do not dispossess insolvent debtors of their property and distribute it speedily and ratably among their creditors are not 'laws on the subject of bankruptcies.'"

Let us analyze this statement: (a) Under the Frazier Lemke Act, an insolvent debtor is dispossessed of his property.

Under subdivision (s), he may be adjudicated a

bankrupt. Bradford, the debtor in the proceeding at bar, was thus adjudicated. (Haw., p. 51.)

Under section 70, National Bankruptcy Law, the trustee in bankruptcy of the estate of Bradford (Haw., p. 76), has become "vested by operation of law" with the title of Bradford to his farm, (see subdivision (n), section 70), and Bradford has become a tenant (Haw., p. 82), whose right to possession as such is dependent upon his paying the rental fixed by the Court. (Note concluding sentence, paragraph 7, Frazier-Lemke Act.) As to distributing the assets of debtors "equally and ratably among their creditors".

The Constitution contains no requirement as to "equal." Any use of that word in describing former laws on the subject of bankruptcy, "but illustrates the historical development of bankruptcy legislation." (Haw., p. 105.) Congress in enacting a law on the subject of bankruptcy is not limited to its previous concepts.

In re Landquist, 70 Fed. (2d), 928, 931.

"The fact that the Frazier-Lemke Act is novel and without precedent in our bankruptcy legislation . . . does not conclude the question as to whether the subject matter is fairly germane to bankruptcy legislation."

In re Bradford, (U. S. Md.) 7 Fed. Supp. 668, 674.

Counsel for the lienholder contend that a law which does not distribute the property of an insolvent "ratably among his creditors" is not a law on "the subject of bankruptcies" and hence void.

The lienholder in the proceeding at bar is not asking for a "ratable distribution" of the assets of a debtor;

it is asking for an exclusive application of property to the payment of a secured debt.

A bankruptcy court may sell encumbered property and distribute the proceeds of such sale.

4 *Remington on Bankruptcy*, (3 Ed.), p. 58, sec. 2377.

Counsel for the lienholder in the Circuit Court of Appeals and in the District Court cited the opinion of Mr. Justice Catron, *in re Klein*, 1 How. 277, Fed. Cas. No. 7865, as creating a limitation upon the plenary power of Congress to establish uniform laws on the subject of bankruptcies. Neither this Court (181 U. S. 186), nor the Circuit Court of Appeals (Rec., p. 104), so construed the language of Mr. Justice Catron, *In re Klein*, *supra*.

True the learned jurist used the word "distribution" but in the proceeding at bar, the lienholder is not asking for a distribution. It is seeking to foreclose a mortgage and obtain payment in full of its debt.

DISCHARGE OF THE BANKRUPT

Paragraph 7 of subdivision (s) of section 75, National Bankruptcy Law, the Frazier Lemke Act, herein challenged as invalid, permits a bankrupt, in the contingencies therein mentioned, to "apply for his discharge as provided by this Act."

The words, "this Act", as hereinbefore cited, self evidently mean the National Bankruptcy Act, of which Frazier-Lemke Act is a part. The National Bankruptcy Act (sec's 14-17), specifies in detail the circumstances in which a debtor may apply for a discharge, the debts not affected by such discharge and the hearing required to be had in passing on such discharge. (Consult, also, sec. 58.)

In the face of these provisions, counsel for the lien holder contended in the District Court, and in the Circuit Court of Appeals:

> "The Court is given no discretion but is *summarily directed* to grant the debtor a discharge upon payment by the debtor at any time within five years of the appraised price of his property, whether or not it satisfies any substantial part of his indebtedness and irrespective of his then financial worth."

As to the claim that the debtor may pay "at any time within five years" * * * "the appraised price of his property, whether or not it satisfies any substantial part of his indebtedness," such a result is a natural incident to any sale made in bankruptcy.

The sufficiency of the price bid depends on the value of the property, not upon the amount of the incumbrance.

As to the debtor becoming a purchaser of his former estate in the future, "irrespective of his then financial worth"; the effect of a discharge is to "release a bankrupt from all his provable debts" (sec. 17). Provable debts are defined by section 63 and include all fixed liabilities "absolutely owing at the time of the filing of the petition * * * whether then payable or not."

A trustee in bankruptcy takes title to property owned by the debtor at the date of the petition. (Sec. 70 N. B. A.)

Property acquired by a debtor after the filing of a petition in bankruptcy cannot be subjected to the payment of debts as to the obligation of which the debtor has been granted a discharge.

United States Code, Annotated, sec. 70, p. 419, note 401.

And a debtor may repurchase his former property which has passed to his trustee in bankruptcy.

In re Cope, 8 Fed. Supp. 778, 783, quoting *Tracy v. Clews*, 115 U. S. 528, 541.

ADMINISTRATION OF ESTATE

Counsel for the lienholder cite authority to the effect that under a bankruptcy law, "the administration of the bankrupt's effects belong to his creditors and not to himself."

Under the Frazier-Lemke Act, a debtor does not administer his own estate. The debtor may become a tenant of the estate and pay rent for the property formerly owned by him. That of itself is nothing new in the bankruptcy law. Under the old bankruptcy law, a debtor might become tenant as to his own estate. The Act provides (sub. b.): "If the creditors desire supervision over the farming operations of a farmer," the cost thereof may be paid as provided in the Act.

Under subdivision (n) of the Act, "the farmer and his property" become subject to the jurisdiction of the bankruptcy court. In view of these provisions, how can it be claimed a debtor farmer administers his own affairs?

COMPOSITIONS

In the brief filed in the District Court, counsel for the lienholder claimed that involuntary compositions were unconstitutional, citing as an authority, a dissenting opinion by Mr. Justice Harlan.

In the Circuit Court of Appeals, it was conceded that compositions "between the debtor and his creditors, which under certain conditions are made binding

on a minority of consenting creditors" were valid. Consult, Rec., p. 106.

ENFORCEMENT OF CONTRACT LIEN

In the brief in the District Court, counsel for the lienholder contended: "There has never been any suggestion in the Federal decisions that a debtor may compel a secured creditor to accept 'an appraised value' of the pledged property, instead of being allowed to enforce his contract lien upon the property itself." Inasmuch as Congress under its power to enact uniform laws upon the subject of bankruptcies, may impair the obligation of a contract, it may of course, impair the validity or integrity of a lien.

As to the annulment of a lien by operation of the National Bankruptcy Law, consult 11 United States Code, Annotated, section 67, p. 188, note 152:

Clarke v. *Larrimore*, 188 U. S. 486.
4 *Remington on Bankruptcy* (3d. Ed.) pp. 681 *et seq.*
In re Jordan, Fed. Cas. 7514, holding Congress can avoid all liens, created by contract or otherwise.

As to the impairment of a contract by the operation of a law on the subject of bankruptcies:

11 *United States Code, Annotated*, sec. 1, p. 5.

JUDGE BOURQUIN'S OPINION

In the brief filed in the District Court, counsel for the lienholder cited an opinion of Judge Bourquin (*In re Conciliation Commissioner*, 5 Fed. Supp. 131), in which the learned judge expressed his views with respect to the Frazier-Lemke Act. But although Judge Bourquin did weep at the act, he did take his share by appointing a conciliation commissioner of his own choosing.

"SCALING DOWN DEBTS"

Counsel for the lienholder denounce a law which, it is said, results in the scaling of debts.

But as Judge Simons has pointed out (Rec., p. 110), the scaling of debt in the case at bar, results from the insolvency of the debtor and the well known right of Congress in the establishment of uniform laws on the subject of bankruptcies, to provide for a discharge of the debtor.

Hanover National Bank v. *Moyses*, 186 U. S. 180.

MORATORIUM

Counsel for the lienholder, in the brief filed in the Circuit Court of Appeals, stated that the Act "gives the debtor the option to prevent any distribution for five years * * *." (Consult, Rec., p. 107.)

In the *Minnesota Mortgage Moratorium Case*, 290 U. S. 398, 442, a moratorium was upheld against the contention that it deprived the mortgagee of its properties without due process of law.

Counsel for the lienholder, in the District Court contended that the Frazier-Lemke Act prohibited "a creditor for a period of five years from enforcing his rights against his debtor and his security."

This statement is inaccurate. During the five years' period, the lienholder is entitled to be paid a reasonable rental annually for the use of the property by the debtor.

> "It is always open to judicial inquiry whether the emergency still exists upon which the continued operation of the law depends." (290 U. S. 398, 442.)

If five years be too long a moratorium, the Court may shorten the period thereof.

Chastleton Corporation v. *Sinclair*, 264 U. S. 543.

An important distinction should here be noted between the effect of a state statute, such as the one construed in *The Minnesota Mortgage Moratorium case*, supra, and the effect of a law on the subject of bankruptcies.

Under the Fifth Amendment, Congress may not deprive a person of his property without due process of law.

Under the Fourteenth Amendment, a State may not deprive a person without due process of law.

What constitutes due process of law under either of these amendments self evidently likewise constitutes due process of law under the other.

Twining v. *New Jersey*, 211 U. S. 78, 101.

Hence if a moratorium constitutes due process of law under the Fourteenth Amendment as to the law of a State, it necessarily constitutes due process of law under the Fifth Amendment as to a law passed by Congress.

But as to the impairment of the obligation of a contract: Congress may impair the obligation of a contract (7 Fed. Supp. 6, 7), but a State may not. (*United States Code, Annotated*, Const. Art. 1, sec. 10, p. 31.)

So the several statements in *The Minnesota Mortgage Moratorium Case*, to the effect the law there scrutinized did not impair the obligations of a contract, but only postponed the remedy to enforce it, have no bearing in passing on the constitutionality of a Federal law on the subject of bankruptcies.

THE ENRICHMENT OF DEBTORS

Counsel for the lienholder claims that the Frazier-

Lemke Act "attempts to enrich debtors at the expense of their creditors."

In passing on a law against the objection, it violates the Fifth Amendment, the Court is not concerned with what a law "attempts" to do, but is concerned only with what is actually done under the law directly affecting the property of the person complaining.

> "We have no power, *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the enforcement of a private right. The party who invokes the power must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented the Court enjoins in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding."
>
> *Massachusettes* v. *Mellon*, 262 U. S. 447, 488.
> *City of Allegan* v. *Consumers' Power Co.*, 71 Fed. (2) 477, 481.

Under the Act now being questioned, Radford may buy his farm from the trustee in bankruptcy by paying therefor the fair and reasonable value thereof, as fixed by two successive judicial decrees. The lienholder has the right to introduce evidence before the referee of the value of the property. He has the right on appeal

to have such evidence reviewed by a District Court, then by a Circuit Court of Appeals, all subject to a certiorari which may be issued by this Court.

How does this enrich a debtor "at the expense of his creditors"?

REFINANCING RADFORD'S INDEBTEDNESS

The lienholder in the proceeding at bar claims that the lienholder called the attention of Radford to the Emergency Farm Mortgage Act of 1933 "and urged him to apply to the Federal Land Bank and Land Bank Commissioner for loans with which to refinance his indebtedness. Radford refused to do so."

In the brief filed in the District Court, the normal market value of Radford's farm was stated at $6700. Seventy-five per cent of this, the amount which the Federal Land Bank and the Land Bank Commissioner was empowered to loan on farms, is $5025. There is no evidence that such a loan would have been granted, if application therefor had been made, nor that the lienholder would have accepted $5025 in discharge of Redford's debt to it.

But under the terms of the Frazier-Lemke Act, Radford is not required to refinance his indebtedness at perhaps an excessive amount, but may have the value of his property fixed by a decree of court and repurchase it at the value so fixed.

THE BLAISDELL CASE

Counsel for the lienholder seek to nullify The Minnesota Mortgage Moratorium Act as to this case, on several grounds, none of which are well taken.

True, the Minnesota statute under review in The Minnesota Mortgage Moratorium Case, also known as

The Blaisdell Case, 290 U. S. 398, "did not impair the integrity of the mortgage indebtedness, either principal or interest."

But the Court in the case just cited was considering the statute of a State which could not constitutionally impair the obligation of a contract, a power nevertheless conceded to Congress in the enactment of a law upon the subject of bankruptcies. (186 U. S. 186)

Again, as to whether or not the relief granted by the Minnesota statute "was limited to the existence of an actual emergency," the exercise of a power is always referable to the authority which authorizes its exercise. This Court has the power to terminate the enforcement of the statute when the conditions of which it is predicated no longer exist. (Rec., p. 110; 290 U. S. 442)

THE RIGHTS OF THE BANK

Counsel for the lienholder contended in the District Court, inasmuch as "Radford cannot pay his debt," that the Bank is entitled to immediate ownership and possession of the mortgaged farm."

This pronunciamento overlooks the essential fact, that the bank "is entitled" to such rights as the law gives it, and no more.

As to the right of the Bank, to sell and convert it (Radford's farm) into cash, this Court has upheld a moratorium as to such rights as valid.

The Minnesota Mortgage Moratorium Case, 290 U. S. 398.

As "to the right (of the bank) to rent it (the farm) at such price as it sees fit", consult District of Columbia Rent Case:

As to the right of the lienholder to see that the farm "is properly cultivated, to prevent the improvements from deteriorating," these rights are preserved to the lienholder by the official supervision of the farming operations of the debtor. (Note, *Radford as a Tenant, infra.*)

As to the alleged right of the lienholder "to a possible enhancement in value from the currency inflation which many careful observers think inevitable," the Frazier-Lemke Act gives the lienholder the right to a second appraisement at any time during the moratorium.

RADFORD AS A TENANT

The lienholder in the proceeding at bar claims that Radford has been derelict as an owner; hence, may not be a good tenant.

Section 75, National Bankruptcy Law, subdivision (b), contemplates supervision "over the farming operations of a farmer."

Under subdivision (j), the terms of a composition or extension proposal "may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period."

> Subdivision (l): "Upon the confirmation of an extension proposal, the court may * * * retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate."
>
> Subdivision (n): "The filing of a petition pleading for relief under this section shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court."

So that when Radford's tenancy in the proceeding at bar, begins, ample power is possessed by the court either to see that Radford is a good tenant or to cancel his lease if he is not, for subdivision (s) provides: "If the debtor fails to comply with the provisions of this subsection, the court may order the trustee to sell the property as provided in this Act." And the provisions of this subsection," includes the payment of a "reasonable rental annually," and which rental may be predicated of good husbandry on the part of the tenant.

The foregoing observations dispose of the contention made in the District Court, that the Frazier-Lemke Act allowed the debtor to "use or misuse" his mortgaged property during the moratorium.

VIOLATION OF AGREEMENTS

In the District Court, counsel for the lienholder claimed that "Radford's present effort to * * * retain possession of the mortgaged farm for five years is a direct violation of his agreements."

What are "his agreements" as applied to Radford:

(1) The obligation of Radford to pay his mortgage indebtedness is impaired by National Bankruptcy Act, and this is permissible. (186 U. S. 186.)

(2) The answer of the lienholder does not plead that Radford agreed in writing (as required by the laws of Kentucky, 2 Kentucky Digest, West Publishing Co., col. 3711, sec. 34), to execute a deed to the property, nor did the lienholder bring a suit for specific performance of the alleged contract, but on the contrary sought to foreclose its mortgage. (Rec., p. 49); consult Assignment of Error, No. 19, Rec., p. 96.)

REDUCTION OF DEBT

In the brief filed in the District Court, counsel for the lienholder claimed that Section 75, National Bankruptcy Law, as approved March 3, 1933, and as amended June 28, 1934, provided, with respect to a debtor: "His debts shall be reduced to the 'fair and reasonable value, not necessarily the market value' of his property." But this is true of all laws on the subject of bankruptcies. A debtor's property to the extent of its value (and that is all there is worth while of property), is applied to the payment of his debts, and the debtor is discharged from the obligation of the unpaid balance due on his debts.

National Bankruptcy Law, Sec. 17.

Counsel for the lienholder contended in the District Court:

(a) "Not only are creditor's debts partially cancelled,

(b) "They are not allowed to collect the part not cancelled for five years."

As to (a), the partial cancellation of a debt results from applying the proceeds of the sale of the security to the payment of the debt, a well and long established practice in the law of bankruptcies.

As to (b), If a debtor have property of which he does not elect to retain possession under the Frazier-Lemke Act, then such property is immediately sold and administered.

THE APPRAISEMENT

The Frazier-Lemke Act requires the property of

the debtor to be appraised "at its then fair and reasonable value, not necessarily the market value, at the time of such appraisal" (Par. 1.)

It is evident that Congress did not here use the term "market value" in its accurate legal sense, that is a value derived from a sale made by one willing but not compelled to sell, to one willing and able, but not compelled to buy. (5 *Words and Phrases*, 1st Ed., pp. 4382 *et seq*), but rather in the sense of the value which might have been derived from a forced sale.

In the case at bar, the appraisers by an amended report approved by the District Court (Rec., p. 86), fixed the fair and reasonable value of the land on which the lienholder in the proceeding at bar has a mortgage, also separately the market value of such property, at $4,445.00 (Rec., pp. 86, 87.)

The lienholder at the hearing had before the Referee in Bankruptcy in this case in which the Referee determined the rental value of the mortgaged property and considered the report of the appraisers herein, the lienholder was offered an opportunity to introduce evidence as to the rental and the market value of the property mortgaged" (Rec., p. 99.)

The District Court had the power to permit the appraisers to file an amended report. The allowance of amendments in pleadings and other papers is to prevent mere modes and forms from prevailing over the intrinsic merits of the litigants.

Roach v. Hastings, 16 Pet. 319.
28 *United States Code, Annotated*, Sec. 777, note.

In the brief filed in the District Court, the counsel for the lienholder in the proceeding at bar, contended with respect to Section 75, as originally approved, and

as thereafter amended: "They (the two enactments) seek to coerce secured creditors into scaling down their debts:

(a) "to the so-called 'fair and reasonable value' of their security as fixed by appraisers more than likely friendly to the debtor and hostile to the creditor,

(b) "irrespective of whether or not that 'fair and reasonable value' is equal to the market value of their security."

As to the personnel of the appraisers, the record recites:

"It appearing that L. J. Harris, one of the appraisers appointed by the Court is Master Commissioner of Christian Circuit Court, that Fred Jackson, one of the appraisers, is County Tax Commissioner of Christian County * * *, and that Lucian Manely, one of the appraisers, is a farmer in Christian County." (Rec., p. 72.)

Each of these appraisers were declared to be "familiar with the value of real estate" in the county where the land in question is situate.

No objection was made in the District Court to the personnel of the appraisers. No evidence was offered by the lienholders as to the value of the property appraised by them.

As to (b), ante: The appraisers fixed "the fair and reasonable value" of the property in controversy to be the market value thereof. (Rec., p. 87.)

Complaint was made in the District Court that the lienholder has "no voice" in the appraisal." It is difficult to understand this point. The referee appoints the appraisers. No reason is perceived why a lienholder may not object to the personnel thereof. The lienholder

may introduce before the referee evidence as to the value of the property.

What greater voice has any litigant in any judicial proceeding?

As to an appeal in case of the appraisement of personal property:

(a) The lienholder in the case at bar has no lien on any personal property.

(b) Under National Bankruptcy Law, Section 24 (b), (c), as amended May 27, 1926, an appeal may be taken from an appraisement of personal property. This appeal is to be taken in thirty days. The Frazier Lemke Act simply gives one year in which to appeal in case of an appraisement of real estate, and does not affect an appeal from an appraisement of personalty.

In the statement of facts in the Circuit Court of Appeals, counsel for the lienholder stated: "The appraisers fixed 'the fair and reasonable value' of the mortgaged property at $4,445.00." The appraisers also fixed the market value of the property at the same amount. (Rec., p. 87.)

In the Circuit Court of Appeals, counsel for the lien holder contended: "Creditors cannot protect themselves against inadequate appraisals when they and the public generally are prohibited from bidding for the property." Again: "Congress gave the debtor alone an option to purchase the property at the appraised price irrespective of how much higher price others were willing to pay. To sell to the debtor at the low appraised price when others are willing to pay more, simply confiscated a portion of the lien creditor's claim."

Neither the lienholder nor the public generally "are prohibited from bidding for the property." If the public generally in good faith does so bid, to be paid in

cash, that is an evidential element to be considered in fixing the value of the property.

For the lienholder to attempt to bid the amount of a debt which as to the difference between the value of the land and the amount of his debt is practically worthless, is but paltering with the situation.

Counsel for the lienholder in the Circuit Court of Appeals said:

"It is certainly unreasonable to allow local appraisers (probably friendly with the debtor), to fix a so called 'fair and reasonable value' with no reference to the market value."

As to this: The market value and the fair and reasonable value of the property was fixed by the appraisers, with the approval of the Court, at the identical amount. (Rec., pp. 86,87.) As to whether such appraisers were "probably friendly with the debtor," no evidence was offered nor contention made before the referee. (Rec., p. 72.)

As to being "local appraisers," the lienholder did not request the appointment of non resident appraisers, nor offer independent evidence of the value of the land.

IMPEDIMENTS

In the District Court, counsel for the lienholder in the proceeding at bar, said of Section 75, as originally approved, and as later amended: "They throw every possible impediment in the way of a creditor seeking to enforce his just rights."

What are the impediments thus assailed? No specification of this allegation is attempted by counsel.

A creditor receives a reasonable rental and the reasonable value of his security. What more can he ask?

PARAGRAPH 3, FRAZIER-LEMKE ACT

In the District Court, counsel for the lienholder in the proceeding at bar, denounced paragraph 3, Frazier Lemke Act, as "confiscation." Inasmuch as that paragraph operates only with the consent of the lienholder, and inasmuch in the proceeding at bar the debtor was not accorded any relief under paragraph 3, such comment has become moot.

"ROBBERY"

In the brief filed in the District Court, the counsel for the lienholder in the proceeding at bar, characterized paragraph 7 of the Frazier-Lemke Act in this wise:

"This is not bankruptcy but robbery."

This statement in this form was eliminated in the brief filed in the Circuit Court of Appeals. But counsel in that court cited *Loan Association v. Topeka*, 20 Wall. 655, 662, 664, (and italicized the quotation):

> "*To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises, is none the less robbery because it is done under the forms of law and is called taxation.*"

Counsel for the lienholder, in the proceeding under review, by this court, claim that the lienholder is being deprived of its property without due process of law as a result of the Frazier-Lemke Act, in violation of the Fifth Amendment of the Constitution of the United States. Counsel are so earnest in this contention that at times they seem to believe that Louisville Joint Stock Land Bank is the owner in fee simple absolute of the property in controversy herein; that the debtor Radford is a stranger to the title; and that Congress by legis-

lative edict has taken the property of the Bank and given it to Radford without exacting any conditions to be performed on the part of the said Radford. In working out this theory they sometimes assume that the Fifth Amendment reads: "No man shall be deprived of his property" and omit the qualification: "without due process of law." Transposed, however, the Constitution reads, in effect: A man may be deprived of his property by due process of law.

Let us analyze the legal status of the respective rights of the lienholder and the debtor in the case at bar. At the outset, prior to the execution of the mortgage we shall assume that Radford had a fee simple title to the property described in the mortgages executed by Radford to the lienholder. There is no express showing as to the fact just stated in the record in this case. But this fact stands practically admitted, for if Radford did not own the property, then the lienholder in this proceeding did not acquire any title to the land under its mortgage, and has no property interest in the land of which it may be said, it is being deprived.

Radford then as the owner of the land, executed two mortgages to the lienholder. These mortgages did not make the lienholder the owner of the land.

In Kentucky, a mortgagee is merely the holder of a lien on the property mortgaged.

Douglass v. Cline, 75 Ky., 12 Bush, 608, 621.
Wagley v. Holt, 77 Ky., 14 Bush, 788, 791.

And enforceable only by a suit in equity.

Ins. Co. v. Cheatham, 221 Ky. 668.

A suit to enforce a lien in a Federal Court is to be regarded as a suit in equity.

Armstrong Cork Co. v. Merchants' Ref. Co., 184 Fed. 199, 202.

"Bankruptcy proceedings are a branch of equity jurisprudence."

1 *Remington on Bankruptcy* (4 Ed.), p. 51, Sec. 23.
1 *Collier on Bankruptcy* (13 Ed.), p. 39.

"The decree of a chancellor is always a matter of grace and never the absolute right of a litigant. The propriety of affording equitable relief rests in the sound discretion of the court, to be exercised according to the circumstances and exigencies of each particular case."

21 *Corpus Juris*, p. 34, Sec. 12.

At common law, the title to the land mortgaged passed to the creditor, "subject to the condition of being defeated, and the title of the debtor may be resumed, on his discharging the debt at the day limited for its payment; and if he did not, the land was lost, and became dead to him forever."

4 *Kent Commentaries*, * p. 137.

At common law, "upon the execution of a mortgage, the legal estate rests in the mortgagee, subject to be defeated upon performance of the condition" (4 *Kent*, * 154).

At common law, a mortgagee may bring ejectment against a mortgagor (4 *Kent*, * 155).

The learned commentator continues:

"In ascending to the view of a mortgage in the contemplation of a court of equity, we leave all these technical scruples and difficulties behind us. * * * the narrow and precarious character of the

> mortgagor at law is changed, under the more enlarged and liberal jurisdiction of the courts of equity. * * * the case of mortgages is one of the most splendid instances in the history of our jurisprudence, of the triumph of equitable principles over technical rules, and of the homage which those principles have received by their adoption in the courts of law. Without any prophetic anticipation, we may well say, that 'returning justice lifts aloft her scale'" (4 *Kent*, * 159).

So that it clearly appears in modern jurisprudence, a mortgagee never had an absolute right to foreclose a mortgage. His right was to appeal to a court of equity, which grants relief as an act of grace, and not as an act of right (221 Ky. 672, *et seq.*).

1 *Jones on Mortgages* (2d Ed.), Section 4, in speaking of a common mortgage, made the statement that in the time of Littleton, the mortgage "had then become a conditional estate; the condition being that upon payment of the debt at a fixed time, the grantor might reenter, but upon breach of the condition, the conveyance became absolute. It was at a later day that the equitable right of redemption after forfeiture became an incident of the mortgage."

The equitable right of redemption is a creature of equity jurisprudence (1 *Jones on Mortgages*, 2d Ed. Sections 6, *et seq.*).

A mortgage at common law was a conveyance of the legal estate by A, the mortgagor, to B, the mortgagee, subject to the condition that if, on a prescribed day A paid B a sum of money, the legal estate immediately revested in A. If, however, A allowed the pay day to pass without tendering the amount due, B's estate became absolute, and all right of A's to recover the land was entirely forfeited. The harshness of this result caused equity to interfere, about three centuries ago, with its

characteristic invention, the Equity of Redemption. Equity gave A the right, enforceable by suit, to pay the amount due at a later date than the prescribed day, and on such payment compelled B to deed back the land to A. This right came to be regarded as creating in A the substantial interest in the land, and equitable estate also called the equity of redemption, which passed on A's death to his heirs. The equity courts, however, scrupulously recognized, in form, the legal right of B, the mortgagee, growing out of his ownership of the legal estate, to the possession of the property. B, therefore, was entitled to take possession of the land and to receive the rents and profits as soon as the mortgage was executed (unless the right to possession was reserved to A in the instrument), or at any other time until the land was redeemed by payment of the debt; and equity would not interfere with his possession. Furthermore, B, as the party entitled to possession, was the only one who could recover the land from a third person. Equity, however, regarding the mortgagor's right as the substantial interest in the land, and B, the mortgagee, as holding his legal estate merely as security for the debt, compelled B when in possession to account for the rents and profits which he received, and to apply them in part payment of the interest on and the principal of the mortgage debt. B, therefore, might extinguish the debt, little by little, by going into possession. He was not limited to this method, however. He might, after the debt was due, bring a suit for foreclosure of—i. e., for cutting off or putting an end to—equity of redemption. In such a suit the court, after ascertaining what was due to the mortgagee, gave the mortgagor a limited time—say six months—in which to make payment: and decreed that in default of such

payment A's equity of redemption should be at an end. This sort of foreclosure practically consisted in removing from B's legal estate the cloud created by A's equity of redemption. 7. *Modern American Law, Mortgages*, sec. 148, also see: *Pomeroy, Equity Jurisprudence*, §§ 1179-1185.

Consult, 10 *Ruling Case Law*, pp. 242, 243, sec's. 3, 4; pp. 500, 501, 502, sec's. 296, 297.

Not long after the courts of equity invented the equity of redemption, they were called upon to defend it by the further rule that the mortgagor cannot, when he executes the instrument, bargain away, either wholly or partially, his right of redemption. Thus, if A, the mortgagor, stipulates in the mortgage that he shall have no right to redeem after the pay day; or that his heirs may redeem but his assigns may not; or that the mortgagee may have the option to buy an absolute title on payment of a bonus and thus cut off the equity of redemption; all such stipulations limiting the right of redemption are wholly void. The reason is plain; if such stipulations were permitted to have effect, they would come into common use, and thus the entire system of equity mortgage law would in practice be destroyed and the mediaeval common law system restored in full vigor. This doctrine is expressed in the sentence, "Once a mortgage, always a mortgage." The wording of this maxim is somewhat misleading; in place of "always," it were better to read, "in all respects" a mortgage. For, on the other hand, it is quite legitimate for the mortgagor, by an independent transaction, after the mortgage is executed, to sell his equity of redemption to the mortgagee. Such a sale, however, will be closely scrutinized by a court of equity and will not be permitted to stand unless it is perfectly fair; since the

mortgagee, while not in a strict fiduciary relation with the mortgagor, is in a position to take advantage of his necessities and to exert undue pressure upon him.

7 *Modern American Law*, "*Mortgages*," sec. 155.

BANK'S OFFER TO BUY

The record discloses that at the hearing before the referee the, lienholder offered to pay "in cash" for the property the amount of its mortgage debt. (Rec., p. 71) This amounted to over $8,000. The highest value placed by the lienholder upon the property before the incident mentioned was $6700.

The record also discloses (without contradiction):

> "And thereupon the counsel for the bankrupt admitted that Louisville Joint Stock Land Bank has a valid lien on the mortgaged property for the amount offered to be paid in cash, and that under the law all money would be immediately returned in satisfaction of its mortgage debt, if such offer be accepted." (Rec., p. 72.)

On appeal to the District Court, the lienholder "offered and hereby offers to pay for said property the full amount of its aforesaid mortgage indebtedness thereupon." (Rec., p. 84.)

In the assignment of errors in the Circuit Court of Appeals (Rec., p. 89), no mention is made of this incident.

The Circuit Court of Appeals treated the incident related "as of course beside the point." (Rec., p. 110.) Otherwise the law would have been nullified by judicial construction.

In the Circuit Court of Appeals counsel for lienholder contended:

> "To say that a lien creditor has a general claim for the difference between the appraised price and the amount of his debt means nothing because the lien creditor will realize next to nothing on such a claim."

This contention reveals the fallacy of the lienholder's contention that it was offering to pay more for the land than the appraised value thereof.

THE GAMBLING DEVICE

Counsel for the lienholder contended in the Circuit Court of Appeals:

> "A five-year delay in selling the debtor's property is not a reasonable delay. This delay is not for the purpose of realizing more from the property for creditors but allows the debtor to gamble at his creditors' expense on the value of the property increasing. The delay is not limited to the existence of an actual emergency, but is a rigid, inflexible delay granted irrespective of changing circumstances."

What does Radford obtain in the circumstances disclosed in this proceeding of which a reasonable minded man would have a right to complain?

(a) Radford in 1924 owned a farm then worth $18,000.

(b) Radford in 1922 and 1924 borrowed in all $9,000 from the lienholder.

(c) On March 1, 1932, and September 1, 1932, Radford had reduced the amount of his two mortgages to $7063.43, plus $891.21 respectively. That is, he had paid on the principal of his debts, the difference between the principal thereof, $9,000, and the unpaid

balance of $7,054.04 (that is $7,053.43 plus $801.21), or $1045.38 paid by Radford on the principal of his debt.

It also appears from the amortization table that Radford paid interest from September 1, 1932, to March 1, 1933, 18 payments in all, totaling $4266.43. One-sixth of this, or $711.07, inured to the benefit of the land bank, for that bank had issued in turn its bonds on a five percent basis. (See Record, p. 17).

On the $1000 note, Radford paid principal $108.79, plus interest $487.22. One-sixth of $487.72 is $81.28. So the bank, having benefited by its transaction with Radford to the extent of $717.07 plus $81.28, a total of $792.35, is asked by law to indulge Radford for six months (½ of $325 or $162.50).

That is the bank, having profited $792.35, is asked to yield any twenty percent of that amount to Radford —and here are the epithets used to characterize such legislation:

Robbery	***Arbitrariness***
Confiscation	***Depriving property without due process of law.***
Repudiation	
Unreasonableness	

It is self-evident that whether or not the mortgage lien held by the lienholder on the property of the debtor constitutes property within the protection of the Fifth Amendment depends on the fact as to whether or not such lien has any tangible or substantial value. A court in upholding the Fifth Amendment deals with substantial controversies and not with theoretical contentions.

The value of the mortgage held by the lienholder on the property of the debtor is resolvable into two elements. As a secured creditor, the value of the lien held by the bank depends on the value of the securities.

This value was ascertained by a judicial decree, rendered at a hearing of which the lienholder had due notice, was present and was afforded an opportunity to introduce evidence (Rec., p. 99.) If this value rises within five years, paragraph 7 of subdivision 4 of section 75, of the Frazier-Lemke Act gives the lienholder the right to a revaluation of the property and the privilege of demanding the higher valuation.

So, as to that part of its property which is represented by the value of the lien which the lienholder holds upon the property of Radford, the lienholder is not being deprived of any portion thereof.

The lienholder cannot complain that it was deprived of competitive bidding in fixing the value of the land on which it holds a lien. Certainly, at the time the referee was engaged in the judicial function of determining the value of the land on which the lien existed, the lienholder had the right to offer evidence of a bona fide cash bid by anybody who was desirous of buying the property. No such evidence was offered. Instead, the bank indulged in the idle gesture of offering in form a sum of money for the property, and which sum would have been immediately repaid to the bank by the trustee in bankruptcy. In fact, it may be assumed that the checks of the parties respectively, would have cleared, the one against the other. Neither the referee nor Judge Dawson, nor the Circuit Court of Appeals, nor it is submitted, will this Court, regard such an effort to nullify the Frazier-Lemke Act, as having any operative force or effect. Such a ruling at the hands of this Court, would in effect be a judicial repeal of a legislative enactment.

As to that portion of the debt of the lienholder which is represented by the difference between the

value of the land and the amount of the lien, the lienholder becomes a general creditor and is entitled to share in the unencumbered assets of the debtor. If these assets are not sufficient for that purpose, the loss of the lienholder "is a loss it has already sustained, not through the operation of the statute, but through the default, insolvency and bankruptcy of its debtor." (Rec., p. 110.)

PUBLIC SALE

Counsel for the lienholder contended in the Circuit Court of Appeals: "Heretofore in enforcing liens in foreclosure and bankruptcy proceedings, it has been deemed essential to sell the property to the highest bidder."

"Heretofore" it has been deemed essential that the Supreme Court meet in the Capitol. Does that prevent the Court from meeting in the new building being prepared for its occupancy?

> "The novelty of a provision is no demonstration of its invalidity." (Rec., pp. 106, 107.)
>
> *In re Bradford* (D. C. Md.), 7 Fed. Supp. 665, 674.
>
> *In re Landquist* (7 C. C. A.), 70 Fed. (2d) 929, 932, 933.

Again we are told: "Secured debts and valid preferences have heretofore only been affected by bankruptcy laws where the interests of general creditors so demanded." As already shown, Congress is not limited in the exercise of its legislative power by what has been heretofore done. If that were true, the law of the repeal or amendment of statutes would cease to be operative. Counsel for the lienholder also contended in the Circuit Court of Appeals:

"Public sale is necessary to foreclosure."

Counsel are here discussing a sale under the decree of a court of equity. But under section 70 (b), National Bankruptcy Act, the property of an estate may be sold at private sale.

> 6 *Remington on Bankruptcy* (4th Ed.), p. 26, sec. 2549.

"The bankrupt may be a bidder at a sale of his assets.

> *Ib.*, p. 39, sec. 2559.

Again we are reminded that requirements as to methods of sale are not constitutional in their nature. As early as the time of Henry VIII, it was provided after authorizing a sale, the Court, as to the property of the bankrupt, might "otherwise * * * order the same for true satisfaction and payment of the said creditors." (1 *Remington on Bankruptcy*, 4th Ed., p. 6.)

RADFORD'S OIL WELL (?)

Counsel for the lienholder indulged in a fantasy in the District Court, which we term Radford's Oil Well(?). To do the subject justice, we quote from their brief in the District Court:

> "Suppose that Radford owned an *unencumbered farm* in addition to this *mortgaged farm*, that four years from now *oil is discovered on the unincumbered farm* and Radford becomes very rich, but the value of the mortgaged farm (now much less than the Bank's debt) does not increase.
>
> "Under the Frazier-Lemke Act, Radford at the end of five years, irrespective of his then worth, can be relieved of his debt and absolutely regain all his property by paying (1) the so-called fair value of the mortgaged farm plus (2) a possible

> ratable share of the *original* appraised value of the unencumbered farm. There is no provision for re-appraisal of any property save that real estate subject to a lien."

As to this last sentence, consult Judge Dawson's opinion. (Rec., p. 63.)

The point was not restated in the Circuit Court of Appeals. But:

(a) Radford does not own an unencumbered farm.

(b) In passing on objections arising under the Fifth Amendment, this Court does not pass on imaginary or improbable possibilities.

THE POLICE POWER OF THE FEDERAL GOVERNMENT.

Counsel for the lienholder contended in the District Court: "The Federal government has no reserved police power * * *." Technically, this is true. The Federal Government, being a government of delegated powers, has no reserved power of any sort.

But when necessary to exert the police power in the exercise of a delegated power, the police power of the Federal Government as to the delegated power is plenary.

> 'The police power is a general term used to express the particular right of a government which is inherent in every sovereignty."
>
> *Lake Shore, etc., Ry. Co.* v. *Smith*, 173 U. S. 684, 689.
> *Freund, Police Power*, p. 62, sec's 62 *et seq.*

> "* * * it is now equally well settled that the United States does possess what is analogous to the police power, which every nation possesses

* * * to carry into effect those powers which the Constitution has conferred upon it."

United States v. *Shauver*, 214 Fed. 154, 156, and *cas. cit.*

THE AGRICULTURAL EMERGENCY

In the District Court, counsel for the lienholder contended: "In fact if the Farm Credit Administration's definition of normalcy and emergency be accepted there is no present agricultural emergency."

This statement was not repeated in the Circuit Court of Appeals. *But subsequently, in this brief, not having as yet received a copy of petitioners, we submit data with respect thereto.* As to Radford:

(a) A farm once valued at $18,000 is appraised at $4,550.

(b) The annual rental of a farm of which the carrying charges are $730, is fixed by the Court at $325.

(c) The lienholder in the case at bar is seeking to foreclose its mortgage and produces no one who is willing to refinance Radford's mortgage.

What greater emergency can there be as to Radford?

Worthen v. Thomas, 54 Sup. Ct. 816, 292 U. S. 426, as to the inability of a State to impair the obligation of a contract, has no bearing upon an act of Congress, for Congress is not subject to such limitation. (186 U. S. 186.)

DENUNCIATIONS OF THE FRAZIER-LEMKE ACT.

In the District Court, the counsel for the lienholder indulged in the following denunciatory language:

"The Frazier-Lemke Act is a vicious piece of

confiscatory class legislation. It is dishonest legislation. It places governmental approval upon, and encourages debtors to *repudiate* their just obligations. It *undermines confidence* and will prove a boomerang to those for whose benefit it was passed. It was pointed out in Congress that it will *destroy private farm credit.* Only then, in an effort to avoid its natural consequences, was the *proviso* inserted limiting its applicability to debts existing on June 28, 1934. But few are those who will not realize that later Congresses may have just as little regard for the sanctity of contracts and that good faith which should be enforced between man and man as did the Seventy-third Congress when it enacted the Frazier-Lemke Act. If the Seventy-third Congress can cancel past debts future Congresses can and will do the same, unless courts halt the present tendency toward overriding private liberty and rights, and cause the people to stop and think and turn to the course of honor and integrity.

"Schemes such as those now prevalent are no new things. They have been tried in all ages, and have always resulted in disaster."

Slightly modified, this language was repeated in the brief filed in the Circuit Court of Appeals.

This Court does not sit in judgment upon the wisdom, integrity or motives of the Congress.

Consult, 4 Federal Digest (West Pub. Co.), p. 3635, Key number 70 (3).

Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 210.

OGDEN v. SAUNDERS.

Ogden v. Saunders, 12 Wheat. 213, 354, was cited in the Circuit Court of Appeals by counsel for the lienholder to the effect a creditor is entitled to a hearing on an application for a discharge filed by a bankrupt.

Nothing in the Frazier-Lemke Act dispenses with

such a hearing. The Act provides that upon complying with its provisions, the debtor may apply for his discharge as "provided for in this Act," that is, National Bankruptcy Act, under which creditors are entitled to notice of "all hearings upon application for * * * the discharge of bankrupt." ,(Sec. 58). Consult, also, sec. 14 (b).

ALEXANDER HAMILTON

Alexander Hamilton, whom counsel for the lienholder so highly and so justly, extol, signed the Constitution under which this Court has decided *Sturges* v. *Crowninshield, Hanover National Bank* v. *Moyses,* and *The Gold Cases.* And mentioned "agriculture," first, as one of the chief concerns of this government.

EXPARTE MILLIGAN

Ex parte Milligan was cited in the Circuit Court of Appeals by the counsel for the lienholder. No one is contending in the proceeding at bar that the Constitution is not omnipresent, or not continuous in its operation, or that the operation theref has been suspended.

RELIEF

In the Circuit Curt of Appeals counsel for the lienholder contended:

> "The Frazier-Lemke Act was enacted for the purpose of relieving farmer-debtors from their debts."

This may be admitted. Indeed we may go further and concede such is the purpose of all laws on the subject of bankruptcies.

In re Reiman, Fed. Cas. 11, 673 (p. 493), affirmed, Fed. Cas. 11,675, quoted Mr. Justice Story's description of a law on the subject of bankruptcies:

> "* * * is a law for the benefit and relief of creditors and their debtors, in cases in which the latter are unable or unwilling to pay their debts."

Consult, 70 Fed. (2d), 931, Rec., p. 107.

Hanover National Bank v. *Moyses* 186 U. S. 186, sustained a law on the subject of bankruptcies which gave a debtor relief from his debts.

In 1 *Remington on Bankruptcy*, (3d Ed.), p. 15, it is said of the Bankruptcy Act of 1841: "It was the first American law that wholly abandoned the original idea that a bankruptcy law was a law only to be invoked by creditors."

Consult, *In re Klein*, 1 How. 265, 277 (note.)

Centuries ago, chancellors discovered a relief for debtors in the right of redemption from a sale under mortgage.

> "The subject of bankruptcies comprehends every phase of the relations between an insolvent or non-paying or fraudulent debtor and his creditors, extending to his or their relief." (Rec., p. 107.)

Louisville Joint Stock Land Bank, in its answer to the amended petition in bankruptcy herein of the debtor, prayed that "it be given all other proper relief." (Rec., p. 49.)

A proceeding in bankruptcy is governed by the principles of equity.

1 *Remington on Bankruptcy* (4 Ed.), sec. 23, p. 51.

He who asks equity must do equity.

21 *Corpus Juris*, p. 172, sec. 151.

AVOIDING ADJUDICATION

Counsel for the lienholder complained in the Circuit Court of Appeals:

> "The fact that a farmer seeks a composition under section 75, instead of section 12, indicates he intends to avoid an adjudication in bankruptcy."

What of it? What provision of the Constitution demands that a farmer be adjudicated a bankrupt?

Under section 12, as amended June 25, 1910, a debtor may offer terms of composition without being adjudicated a bankrupt. In this respect, no difference exists between the two sections, 12 and 75.

As to a composition in bankruptcy without an adjudication:

7 *Remington on Bankruptcy* (4 Ed.), sec. 3069.

DISCRIMINATION AS TO CREDITORS

Counsel for the lienholder contended in the Circuit Court of Appeals

> "To have the general creditors fate depend upon the decision of secured creditors is capricious legislation."

How may a secured creditor claim that legislation which permits him to control the operation of paragraph 3 of the Frazier-Lemke Act deprives it of its property without due process of law?

EXEMPT PROPERTY

Counsel for lienholder contended in the Circuit Court of Appeals:

It is argued by learned counsel for lienholders that as to exempt property thus set aside, neither paragraph 3, nor paragraph 7 of the Act are operative.

But that question cannot be raised by a lienholder as impairing the validity of the Act. Such contention is purely a question of statutory interpretation not present in the proceeding at bar, because no real property was set apart as exempt.

The theory of counsel is that under a literal interpretation of the Frazier-Lemke Act:

(1) Exemptions are to be set aside as provided in paragraph 2 of the Act.

(2) Paragraphs 3 and 7 are not operative as to property set apart as exempt.

Hence, the law is unconstitutional.

But, (1) as already stated, in the proceeding at bar, no realty was set apart as exempt. (2) The constitutional requirement as to the equal protection of the law applies only to the action of a State.

Re Virginia, 100 U. S. 313, 319.

(3) A lienholder, whose lien is single and entire, cannot complain that as to a part of his security the law is more favorable to him than it is as to another part thereof. Such a result, if allowable, enures to the benefit of the lienholder and to the prejudice of the debtor.

DELAYING CREDITORS

Counsel for the lienholder said of the five years' moratorium authorized by the Frazier-Lemke Act: "This delay is not for the purpose of realizing more for the property *for creditors.*" (as if the creditors were the only persons to be considered), "but allows

the debtor " (what a horrible thing to do in a government of laws and not of men), "to gamble at his creditor's expense" (how can that be in view of the reappraisement privilege accorded the creditor), "on the value of the property increasing."

We pause to ask:

Q. Whose property has decreased in value? A, Radford's.

Q. Whose property may increase in value? A. Radford's.

Q. Who is Radford in the eyes of the law? A. A person.

Q. Whom does the Fifth Amendment protect? A. "Any person."

Q. For whose benefit did the Chancellor discover, centuries ago, the equity of redemption? A. The benefit of the debtor.

And so on ad infinitum.

Let us record another complaint of the lienholder:

> "The delay is not limited to the existence of an actual emergency" (to Radford the emergency resulting in the loss of his farm seems very actual), "but is a rigid, inflexible delay granted irrespective" (counsel doubtless meant to use an adverb, "irrespectively") of "changing circumstances."

Counsel for the lienholder fail to discover that under the doctrine of *The Minnesota Mortgage Moratorium Case* (290 U. S. 398), whenever "changing circumstances" (not yet manifest) make unreasonable and arbitrary, a judicial recognition of the emergency in which Radford now finds himself, then the Frazier-Lemke Act, as to the courts will join the shades where reposes in innocuous desuetude, the law regulating rents in the District of Columbia.

Chastleton Corporation v. *Sinclair*, 264 U. S. 543, 547, 548.

As to the moratorium, counsel for lienholder complained in the Circuit Court of Appeals: "There would be no objection to renting the property for a short period" (what a wonderful concession, not made by the way, in the District Court), "if the debtor were willing to pay more rent than others would."

No evidence was offered at any time by the lienholder that any other person was willing to pay any rent at all. In the absence of such competition, the debtor must still pay "a reasonable rental annually." The debtor does not profit by the absence of competition. Why should the lienholder profit by its presence?

To say of the debtor, as did counsel for the lienholder in the Circuit Court of Appeals: "He (the debtor) can abandon it (the property) any time it becomes expedient to do so," is to overlook the essential fact that paragraph 7 of the Frazier-Lemke Act does not permit a debtor who has become a tenant to abandon the property at any time it becomes expedient to do so.

(a) The debtor becomes obligated to pay rent for five years. (Consult, Rec., pp. 79, 82,) If he fails to pay, he may be ousted just as any delinquent tenant might be, but per contra, if he became solvent, his obligation to pay rent could be enforced just as a similar obligation on the part of any tenant.

(b) It is not unusual to execute a lease with an option of purchase on the part of the tenant.

SALE TO DEBTOR

Counsel for the lienholder conceded in the Circuit Court of Appeals: "Likewise, there would be no objection to the debtor purchasing the property" (the

economic emergency, the existence of which the lienholder is apparently unconscious is resulting in a liquidation of its affairs, hence it is desirous of selling Radford's farm), "if he would pay a higher price for it than any one else would."

Who "else would * * *" pay a higher price than Radford for his farm? The record is silent on that point. Certainly such an offer would have been a cogent factor in fixing the amount of the price to be paid by Radford for the privilege of being returned "to his possession." (Lev. 25.)

THE DEBTOR'S PETITION

Counsel for the lienholder criticized section 75, National Bankruptcy Act, in this wise:

> "Any farmer (claiming to be insolvent or unable to meet his debts) may file a petition * * *"

The Act does not so provide. The petition of the farmer must state (and that under oath, National Bankruptcy Act, sec. 18 (c)), "that the farmer is insolvent or unable to pay his debts as they mature." (Sec. 75, sub. (c).)

The answer in the proceeding at bar did not take issue with this obligation on the part of Radford. (Rec., pp. 8, 9, 12, 15-50), but pleads it is willing to cancel a debt of Radford of over $8,000 by accepting a deed to a tract of land valued by it at not more than $6,700.

The District Court adjudicated Radford a bankrupt, thus sustaining the allegations of the petition.

By analogy, the requirement of section 74 requiring a court, before approving a debtor's petition as properly filed, to be satisfied that the petition "has been

filed in good faith,' is applied to a farmer's petition under section 75.

Buy why may not any debtor, no matter if solvent, be adjudicated a bankrupt?

1 *Remington on Bankruptcy* (4 Ed.), p. 104, sec. 48.

V

THE RIGHT TO REPURCHASE GIVEN TO A FARMER IN THE FRAZIER-LEMKE ACT IS AN EXEMPTION GRANTED BY CONGRESS IN THE EXERCISE OF ITS CONSTITUTIONAL POWERS ON THAT SUBJECT.

Paragraph seven of the Act of June 28, 1934, known as the Frazier-Lemke Act, the constitutional validity of which is challenged in the case at bar, is in the nature of an exemption whereby Congress granted to an insolvent debtor, the privilege, immune and exempt from the claims of his creditors, and upon the terms stated in the paragraph:

(a) To lease the property in question for a term of five years;

(b) To re-purchase the property during the lease period by paying the greater of two appraisements.

The power of Congress, in the enactment of uniform laws on the subject of bankruptcies, to grant exemptions to an insolvent debtor, and to prescribe the nature thereof, is universally recognized.

Hanover National Bank v. *Moyses*, 186 U. S. 186.

The constitutionality of Section 6, National Bankruptcy Act, relating to exemptions, has been upheld against the attack that it was not uniform in its opera-

tion, hence void; but otherwise its constitutionality has never been questioned, but on the contrary, generally recognized.

1 *Collier on Bankruptcy* (13 Ed.), pp. 277, 279, *et seq.*
3 *Remington on Bankruptcy* (3 Ed.), Sections 1270, *et seq.*

In re Smith, Fed. Cas. 12,996, Mr. Justice Woods, then a circuit judge, recognized the power of Congress to determine the exemptions which should be allowed to bankrupts.

See *Hurley* v. *Devlin*, 151 Fed.——.
In re Reiman, Fed. Cas. 11675 (per Mr. Justice Hunt).

"Creditors may pursue their State remedy against exempt property after it has been set aside to the debtor as bankruptcy jurisdiction over it then ceases."

In the case at bar, no realty was set apart as exempt. (Rec., pp. 73-75.)

Paragraph 2 of the Frazier-Lemke Act contemplates that "after the value of the debtor's property shall have been fixed by the appraisal * * * the referee shall issue an order setting aside to such debtor his exemptions * * *, subject to any existing mortgages or liens upon any such exemptions to an amount equal to the value, as fixed by the appraisal, of the value of such exempt property as is covered by any mortgage or lien * * *."

Also see opinion on this precise point, construing the Frazier-Lemke Act, by Judge Otis, (West. Dist. Mo.), rendered March 13, 1935. Brief, page 8, *et seq., infra.*

In a review in the "Kansas City Times" for Friday, March 15th, on Judge Merrill Otis's upholding the constitutionality of the Frazier-Lemke Act, is the following statement:

VI

ENGLISH BANKRUPTCY ACTS, 1788, AND PRIOR THERETO REVIEWED.

In view of the contention of the counsel for the lien holder in the District Court, that the United States of America in 1934 is limited in its enactment of uniform laws on the subject of bankruptcies to the English model prevailing in 1789, it may be well to examine more critically the provisions of such Acts.

1 *Remington on Bankruptcy* (4 Ed.), p. 6, states that the first English Bankruptcy Act was passed in 1542 (34 and 35, Henry VIII, ch. 4).

The law "was framed against debtors and no way for them, no discharge or release from debts being provided for; next that it is concerned wholly with fraudulent debtors, and not at all with those who are simply unfortunate."

"The pivotal issue, according to Judge Otis, is whether congress, which may save to the bankrupt a substantial part of his assets, may also save to him temporarily all of his assets, while giving his creditors a reasonable rental for the assets during that period and their fair value at its end. It is on this point that the Judge's opinion is particularly significant. He says:

'A negative answer to this question can be justified only upon the theory that the word "bankruptcies" as it is used in the Constitution necessarily is limited in meaning to its exemplification a century and a half ago. But none of the concepts of the Constitution is so limited. This one is not. While none of the concepts of the Constitution is so elastic that it may be distorted to defeat an end aimed at in its formulation, each is sufficiently elastic to enable its original purpose to be accomplished by varying means and methods.'

Here, stated once more, is the philosophy of constitutional law so brilliantly developed by the late Justice Oliver Wendell Holmes of the United States Supreme Court to the effect that the Constitution must be interpreted in the light of new conditions and that it must not be used, beyond the absolute compulsion of its words, to block social and economic experiments desired by the people, "even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect." Since that appears to be the prevailing attitude of the United States Supreme Court today, Judge Otis may be confident that he is on strong legal ground, and has adopted a modern and enlightened view of the Constitution in applying such a theory to the new farm debt legislation."

But even that law did not require a sale of assets. After authorizing a sale, the law continued: "* * * or otherwise to order the same for true satisfaction and payment of the said creditors; that is to say, to every of the said creditors, a portion rate and rate alike, according to the quantity of said debts."

There was no discharge provided from unpaid debts. No provision was made for the payment of secured claims. Nor any provision for compositions.

In 1570, the English Bankruptcy Act was limited to traders, merchants and dealers in money (*Ib.*, p. 10). That Act (1570) "did not grant a discharge to bankrupts * * * and did not allow debtors voluntarily to go into bankruptcy." (*Ib.*, p. 11).

Until the reign of Queen Anne, "nearly two-hundred years after the first bankruptcy law of King Henry VIII, there was no provision whatsoever for discharging the bankrupt from his remaining debts."

Later a provision for a discharge was added, if the assets of the bankrupt paid a certain percentage of his debts and a certain percentage of his creditors assented thereto (*Ib.*, p. 12).

Suppose the United States in 1934 had gone back to English models in force in 1780, for a type of bankruptcy law, we would have had this result:

(1) No voluntary proceedings.

(2) No compositions.

(3) A law limited to traders, merchants and dealers in money.

(4) No provision for exemptions, payment of taxes or wages, or protection of secured claims.

(5) No reorganization of corporations in bankruptcy without a sale of assets.

A court is not justified, in order that the lienholder in this case may dispossess Radford of his farm and leave him hopelessly in debt, in thus striking down practically all of the bankruptcy laws enacted by Congress and heretofore generally regarded as constitutional.

The effect of a decision is to be considered before announcing it.

In *Home Bldg. & L. Assn.* v. *Blaisdell*, 290 U. S. 398, 443, the Court quoted Mr. Chief Justice Marshall to the effect that the Federal Constitution was "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs," also from another case (252 U. S. 433): "The case must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago" (290 U. S. 443).

Prof. Garner (12 *Mod. Am. Law*, pp. 14, 15), says of the Federal Constitution: "* * * to hold that it has not been modified or has not expanded through custom and traditions would be to close our eyes to one of the most obvious historical facts in our Constitutional development. The fact is, if the Federal Constitution were stripped of its conventions and displayed in its legal nakedness, it would be unrecognizable and much of it would be meaningless or unworkable."

Black on Bankruptcy (3 Ed.), Sec. 4, states:

> "The first national bankruptcy act was passed in 1800 and repealed in 1803. It was modeled upon the British statute then in force, was directed against insolvent 'traders', and provided only for involuntary or compulsory proceedings."

The author then mentioned the statute enacted in 1841, and repealed in 1843, and then speaking of the Act of 1867, said:

"This act (1867), as well as that of 1841, contained provisions for voluntary bankruptcy and was primarily intended for the benefit of insolvent debtors."

Sec. 2: "Under the clause of the Federal Constitution from which the power of Congress in this behalf is derived, it is within the competence of the national legislature, untrammeled by any state laws, to enact any and all forms of legislation tending to promote the distribution of an insolvent's estate among his creditors and his discharge from their demands, provided only that its enactments are not wanting in the character of uniformity.

"In particular it has been decided that the authority of Congress over the subject of bankruptcy is not to be guaged or limited by the British statutes of bankruptcy which were in force at the time of the adoption of our constitution." (*Fed. Cas.* 11673, 11675). (Cases cited brief, 46 Law Ed., Sup. Ct., U. S., 1117; also 186 U. S. 186.)

"Nor has any success attended the argument that the Constitution contemplated only a law which would permit debtors to force an application of the debtor's property to the payment of their claims. On the contrary, the voluntary features of the bankruptcy law, allowing a debtor to present his own voluntary petition for adjudication and to obtain his discharge in the proceedings had thereon, have been amply vindicated by the decisions of the courts.

"Again, although the bankruptcy act invades and annuls vested rights, and impairs or destroys the obligation of contracts, by releasing debtors from their obligations upon a partial payment or without any payment at all, and making its provisions compulsory upon creditors, it is not for that reason unconstitutional. The provision of the Federal Constitution relating to the obligations of contracts is a limitation upon the power of the legislatures of the states only, and does not effect the authority of Congress."

"Sec. 4. The bankruptcy law is a remedial statute and should not be subjected to a narrow or illiberal interpretation; it should be construed

reasonably and according to the fact import of its terms, with a view to effect its objects and to promote justice."

See, also, *Brandenburg on Bankruptcy* (4 Ed.), pp. 1-14.

"The oppressor's hand resting heavily upon our forefathers in the old world, and causing them to migrate to new and untried fields, naturally inclined them to incorporate liberal and wise provisions for the protection of all classes in the Federal Constitution."

Brandenburg, p. 6.

A National Bankruptcy Law "is paramount and exclusive of all state insolvent laws inconsistent therewith."

Brandenburg, pp. 9, 10.

VII

CONGRESSIONAL DEBATES

Counsel for the lienholder in both the District Court and in the Circuit Court of Appeals made quotations from Congressional debates incident to the passage of the Frazier-Lemke Act.

As to the practice of this Court in such matters, consult 8 U. S. Supreme Court Digest (Lawyer's Co-op. Pub. Co., p. 5792, sec. 146.

But if the Court desires to enter upon a study of the subject just mentioned, the following references to the Congressional Record are submitted for the information of the Court in tracing the legislative history of the Frazier-Lemke Act, and in discovering the need therefor: March 13, 1933, Senator Fletcher (77 Cong. Rec. 245): "A thousand municipalities are today in default on their bonds * * *."

Consult opinion, *Thomson, Wood & Hoffman, specialists in Municipal Bond Law*, 77 Cong. Rec. 245.

March 22, 1933, Congressman Lemke, (77 Cong. Rec. 747): "There are danger signals all along the line. In my State and in numerous other states, mortgage foreclosures are now being stopped by force by enraged farmers, who are driven to desperation in defense of their homes. The law of self-preservation is in operation, a law that is greater than any law that man ever wrote, and it is time we take heed of that warning."

Congressman *Fresinger* (77 Cong. Rec. 747): "As a direct measure of relief, and it is only relief, cut down the interest rates on farm mortgages and amortize the payments. I have spoken to many farmers in my district, and this is what the average dirt farmer seems to want."

Congressman *Christianson* stated, April 12, 1933, a survey conducted by the University of Minnesota "showed that 143 farmers, a fair cross section of northwestern Minnesota, in 1932 earned no labor income." (77 Cong. Rec. 159.)

Consult *Congressman Crowe* (77 Cong. Rec. 1592).

In 1923, Minnesota established a Rural Credit Bureau. Money was loaned on 13,434 farms. Of these loans, 6,129 became delinquent and 3,190 of the delinquent loans were foreclosed (77 Cong. Rec. 1593.)

Consult Congressman *Blanton* (77 Cong. Rec. 1595.); Congressman *Church* (Cong. Rec. 1597 *et seq.*)

Congressman *Green* (77 Cong. Rec. 1599.) "Approximately 42 per cent of the farms of the United States are covered by mortgages.

Gross farm income amounted in 1919 to $17,000,000,000; in 1923 to 1929, between $11,000,000,000 and $12,-

000,000,000; in 1930 to $9,347,000,000; in 1931, $6,920,-000,000; in 1932, $5,000,000,000.

"Forced sales numbered for the year ending March 1, 1931, 26.4 per thousand farms; for the year ending March 1, 1932, 41.7 per thousand farms."

Consult *Congressman Mott,* (77 Cong. Rec. 1600); *Congressman Ford,* (77 Cong. Rec. 1603); *Congressman Deen,* (77 Cong. Rec. 1603); *Congressman Lemke,* (77 Cong. Rec. 1603); *Congressman McFarlan,* (77 Cong. Rec. 1606); *Congressman Weidman,* (77 Cong. Rec. 1607); *Congressman Arens,* (77 Cong. Rec. 1612); *Congressman McCarthy,* (77 Cong. Rec. 1613); *Congressman Focht,* (77 Cong. Rec. 1614); *Congressman Hughes,* (77 Cong. Rec. 1614); *Congressman McScod,* (77 Cong. Rec. 5514).

Note, debate *Municipalities Bankruptcy Law,* 77 Cong. Rec. 5459-5490. At a Farmers National Relief Conference held at Washington, D. C., December 8, 1932, 250 farmers, from 26 states, adopted a resolution from which we quote:

> "We are determined to stop a ruthless pressure from creditors who threaten to sweep us from our land and homes.
>
> "We demand: * * *
>
> "No evictions: During this national crisis Congress must declare all foreclosures, seizures of property and evictions illegal." (76 Cong. Rec. 232.)

Consult *Congressman McKeown,* (76 Cong. Rec. 222); *Article by Bernard Osterlenk,* (76 Cong. Rec. 610); *Congressman Patman,* (76 Cong. Rec. 1134); *Resolutions of Citizens and Taxpayers of Obion County, Tennessee,* (76 Cong. Rec. 1159); *Memorial of State Legislature of North Dakota,* (76 Cong. Rec. 1716); *Congressman Ayres,* (76 Cong. Rec. 1985); *Congressman*

McKeown, (76 Cong. Rec. 2785); especially the names of those mentioned by him; *Memorandum of Solicitor General Thacher*, (76 Cong. Rec. 2771); *Debate on Act of March 3, 1933*, (76 Cong. Rec. 2902 *et seq.*); *Congressman Hogg*, (76 Cong. Rec. 2938 *et seq.*); *Senator Thomas*, (76 Cong. Rec. 4694); *Senator Hastings*, (76 Cong. Rec. 4876, 4901); *Congressman Glover*, (76 Cong. Rec. 4949); *Memorandum Solicitor General Thacher*, (76 Cong. Rec. 5014); *Senator Walsh*, (76 Cong. Rec. 5089); *Senator Fletcher*, (76 Cong. Rec. 5089, 5097); *Congressman Hastings*, (76 Cong. Rec. 5783); *Congressman Gilchrist*, (76 Cong. Rec. 5785); *Senator Blaine*, (76 Cong. Rec. 5323); *Congressman Sumners*, (76 Cong. Rec. 5349); *Congressman Hastings*, (76 Cong. Rec. 3911); *Senator Tydings*, (76 Cong. Rec. 3934); *Congressman Lankford*, (76 Cong. Rec. 4257); *Senator George*, (76 Cong. Rec. 2864); *Congressman Hogg*, (76 Cong. Rec. 2938); *Congressman Kopp*, (76 Cong. Rec. 3037); *Congressman Jones, of Texas*, (78 Cong. Rec. 12130); *Congressman Johnson, of Texas*, (78 Cong. Rec. 12132); *Congressman Miller*, (78 Cong. Rec. 12135); *Congressman Lemke*, (78 Cong. Rec. 12134); *Congressman Randolph*, (78 Cong. Rec. 12136); *Congressman Busby*, (78 Cong. Rec. 12137); *Congressman Ruffin*, (78 Cong. Rec. 12138); *Congressman Greenway*, (78 Cong. Rec. 12138); *Congressman Carpenter, of Nebraska*, (78 Cong. Rec. 12149); *Senator Long*, (78 Cong. Rec. 12060-12067); *Senator Hastings*, (78 Cong. Rec. 12071, 12072, 12073-12075, 12077); *Congressman Martin, of Colorado*, (78 Cong. Rec. 12295); *Congressman Stubbs*, (78 Cong. Rec. 12267); *Congressman Ayers, of Montana*, (78 Cong. Rec. 12318); *Senator Walsh*, (78 Cong. Rec. 12377-12381); *Congressman Lemke*, (78 Cong. Rec. 12596-12600); *Congressman Truare*, (78 Cong. Rec. 12606, 12628); *Congressman Lozier*, (78

Cong. Rec. 12620); *Senator Bailey*, (78 Cong. Rec. 10676); *Congressman White*, (78 Cong. Rec. 10996); *Congressman McGugin*, (78 Cong. Rec. 9262-9264); *Senator Lang*, (78 Cong. Rec. 10184-10186); *Congressman Gillette*, (78 Cong. Rec. 8131); *Congressman Lundeen*, (78 Cong. Rec. 364); *Congressman Lemke*, (78 Cong. Rec. 180); *Congressman Swank*, (78 Cong. Rec. 252); *Congressman Jones*, (78 Cong. Rec. 720); *Congressman Patman*, (78 Cong. Rec. 746); *Congressman Foulkes*, (78 Cong. Rec. 755-760, 1532-1534); *Congressman Hastings*, (78 Cong. Rec. 6887); *Congressman Truare*, (78 Cong. Rec. 7369, 7719).

Congressman McKeown, (76 Cong. Rec. 2788), enumerated the following as among those who assisted in drafting section 77 B, National Bankruptcy Law, which in principle is identical with the Frazier-Lemke Act:

Judge Thomas D. Thacher (Solicitor General of the United States); Robert A. B. Cook, Boston, Massachusetts, Committee on Bankruptcy, Commercial Law League of America; Paul H. King, former President National Association of Referees in Bankruptcy; Harold Remington and W. Randolph Montgomery, counsel National Association of Credit Men.

76 Cong. Rec., p. 1869, discloses the following special message from President Hoover:

> "To the Senate and the House of Representatives:
>
> "On February 29 last I addressed the Congress on the urgent necessity for revision of the bankruptcy laws, and presented detailed proposals to that end. These proposals were based upon most searching inquiry into the whole subject which had been undertaken by the Attorney General at my direction. While it is desirable that the whole matter should be dealt with, some portions of these proposals as an amelioration of the present situa-

tion are proving more urgent every day. With view to early action, the department, the committees, the Members of Congress, have been collaborating in further development of such parts of these proposals as have, out of the present situation, become of most pressing need. I urge that the matter be given attention in this session, for effective legislation would have most helpful economic and social results in the welfare and recovery of the Nation.

"The process of forced liquidation through foreclosure and bankruptcy sale of the assets of individual and corporate debtors who through no fault of their own are unable in the present economic emergency to provide for the payment of their debts in ordinary course as they mature, is utterly destructive of the interests of debtor and creditor alike, and if this process is allowed to take its usual course misery will be suffered by thousands without substantial gain to their creditors, who insist upon liquidation and foreclosure in the vain hope of collecting their claims. In the great majority of cases such liquidation under present conditions is so futile and destructive that voluntary readjustments through the extension or composition of individual debts and the reorganization of corporations must be desirable to a large majority of the creditors.

"Under existing law, even where majorities of the creditors desire to arrange fair and equitable readjustments with their debtors, their plans may not be consummated without prohibitive delay and expense, usually attended by the obstruction of minority creditors who oppose such settlements in the hope that the fear of ruinous liquidation will induce the immediate settlement of their claims.

"The proposals to amend the bankruptcy act by providing for the relief of debtors who seek the protection of the court for the purpose of readjusting their affairs with their creditors carry no stigma of an adjudication in bankruptcy, and are designed to extend the protection of the court to the debtor and his property, while an opportunity is afforded the debtor and a majority of his cred-

itors to arrange an equitable settlement of his affairs, which upon approval of the court will become binding upon minority creditors. Under such process it should be possible to avoid destructive liquidation through the composition and extension of individual indebtedness and the reorganization of corporations, with the full protection of the court extended to the rights and interest of creditors and debtors alike. The law should encourage and facilitate such readjustments in proceedings which do not consume the estate in long and wasteful receiverships.

"In the case of individual and corporate debtors all creditors should be stayed from the enforcement of their debts pending the judicial process of readjustment. The provisions dealing with corporate reorganizations should be applicable to railroads, and in such cases the plan of reorganization should not become effective until it has been approved by the Interstate Commerce Commission.

"I wish again to emphasize that the passage of the legislation for this relief of individual and corporate debtors at this session of Congress is a matter of the most vital importance. It has a major bearing upon the whole economic situation in the adjustment of the relation of debtors and creditors. I therefore recommend its immediate consideration as an emergency action."

76 Cong. Rec. 2733 (1933), discloses the following extract from Radio Address, John A. Simpson, President of the Farmers Union, telling of a trip West:

"The revolutions over the country are increasing in numbers, in size, and in quality. There are many states now where the courts have revolted. In a meeting I addressed in the auditorium of the Central High School, Oklahoma City, two district judges voluntarily came to the stage and announced there would be no foreclosures in their courts until the prices of farm crops were reasonable. Such revolutions on the part of the courts are occurring all over the country. I found legislatures in open revolution passing moratorium laws

that violate the terms of contracts. I found farmers organizing by counties for the purpose of preventing sales of mortgaged property. In some instances these farmers have prevented these sales by force. In most instances by persuasion. However, in both instances it is revolution."

VIII

THE DEPRESSION

The issue as to The Depression is important to be considered in connection with the determination of this case. Whether or not the moratorium or repurchase privileges of the Frazier-Lemke Act are so unreasonable or arbitrary as to violate the Fifth Amendment must necessarily depend upon the economic conditions existing at the time of their enforcement. Vide authorities cited on this point. At the outset, let us particularize.

(a) The District Court and the Circuit Court of Appeals have both proceeded in the case at bar upon the theory that there is a worldwide condition of an economic nature justifying the enactment and present enforcement of the Act in controversy in this proceeding. Ordinarily, such a coincidence of thought on the part of two lower courts as to the facts of a case are binding on this Court.

But as the proceeding at bar transcends the limits of a personal controversy, and presents a question of public concern, we are perforce compelled to assemble information, meagre in its scope considering the wealth of material at hand; and yet all-compelling in its probative force and effect.

As to the debtor Radford: He owns a farm valued in 1922 and 1924, at $18,000. In the year 1934, the appraisers, with the approval of the District Court, and in the absence of any evidence to the contrary, valued the farm at $4,550. The loan thereon is $9,000. The carrying charge on such a loan, under land bank rules, is $630 a year. The referee fixed the rental at $325

a year, the same being deemed a "fair and reasonable value, not necessarily the market value" as the act provides, but also coincident with the market value as the record shows.

In the brief filed in the District Court, counsel for the lienholder made this statement:

> "On May 25, 1934, Harry B. Lane, an appraiser of the Farm Credit Administration, assigned to the Federal Land Bank of Louisville, appraised the mortgage farm and fixed its recovery value, i. e., its cash sale value at $5,000, and its normal market value at $6,700." (Original brief, p. 7.)

In the brief in the District Court, counsel for the lienholder made this guarded statement: "In fact if the Farm Credit Administration's definition of normalcy be accepted, there is no present agricultural emergency." (August, 1924.) At the same time, counsel referred to "the currency inflation which many careful observers consider inevitable" and also stated: "There is no certainty that the value of the mortgaged farm may not be much greater in two years than it now is, and much less in five years than it now is."

The lienholder made two loans to Radford aggregating $9,000. At the time of the foreclosure, the principal of these notes, had been reduced by payment to $7063.43 and $891.21 respectively, a total of $7954.64, or less than $8,000. The lienholder did not offer to renew its loan by accepting a new mortgage, and starting Radford over again, on a reduced carrying charge. It makes no such offer now. It seeks to foreclose the mortgages executed by Radford.

Much was said in the briefs in the courts of first instance as to the alleged failure of Radford to refinance his mortgage through Federal Land Bank, Louisville, Kentucky. No showing was made as to how much,

if any, that bank was willing to loan Radford; (certainly not $8,000 on a present cash value of $5,000 and a rental value of $325 annually), and no evidence that the lienholders would accept in discharge of its debt, the amount the Federal Land Bank might have been willing to loan to Radford.

Louisville Joint Stock Land Bank is liquidating its affairs. Why? Because in the present economic conditions prevailing in this country, it is impossible to sell a farm loan, the payment of which is not guaranteed by the government.

When the case reached the Circuit Court of Appeals, counsel for the lienholder did not contend that the emergency was then over. The complaint was that the Frazier-Lemke Act was "not limited to the existence of an emergency." The statement hereinbefore quoted from the brief in the District Court: "* * * there is no present agricultural emergency" was not contained in the brief in the Circuit Court of Appeals.

In the Circuit Court of Appeals, a quotation was made from Gov. Myers (Farm Credit Administration), to the effect that the activities of that agency "*will* eliminate an extensive need for resort to the provisions of the Frazier-Lemke Act." This was but the expression of a hope, not the statement of an existing fact. In the District Court for the Northern District of Indiana, on March 28, 1935, there were pending 279 section 75 cases.

But there is no showing that Farm Credit Administration (which has only refinanced one-fifth of the outstanding farm mortgages), will loan Radford a sum of money sufficient to induce Louisville Joint Stock Land Bank to release its mortgage.

As to the substantive showing of an emergency, the Court is reminded:

(a) Congress is considering the issuance of $4,800,000,000 in bonds for public improvements, to furnish empoyment for the jobless.

(b) The showing made in the *Gold Cases*, just decided by this Court as to the economic necessity for the legislation therein considered.

(c) Congress is extending the loan power of Home Owners' Loan Corporation by $1,750,000,000. Why?

In fact, practically every effort of the Administration is now devoted to placing money in circulation by issuing government bonds, and then spending the money derived from a sale thereof. Every demand for governmental funds (and "their name is legion"), has that motive as its basis.

Home Life Magazine for January, 1935, contains the following statement from the Insurance Department of the State of New York:

"In common with other life insurance companies, this Company has experienced during the past three years a loss in the volume of new business written, and an increase in the demand for policy loans and in the number of policies offered for surrender. A satisfactory cash position has been maintained throughout this period. As explained in the section of the report covering dividend methods, the Company decreased the scale of dividends paid policy holders in 1933 by 20% and the lowered scale has been continued for 1934."

The annual statement of Home Life Insurance Company (December 31, 1934), shows that 23.9 percent of its assets represents loans on its own policies. Why this borrowing on what rightly considered, should be regarded as a sacred possession?

In his most recent monthly Bulletin (February), Col. Leonard P. Ayres, well known economist of Cleveland, says:

"The index industrial production is given at 21.7

percent below normal for December, with a preliminary figure of 18.1 percent below normal for January, and an estimate of 18.1 percent under normal for February."

We are indebted to the annual report as of December 31, 1934, of The Lincoln National Life Insurance Company of Fort Wayne, Indiana, for the following information:

> "Improvement in the combined production of new business of all the life insurance companies was shown in 1934 for the first time in five years, for though production in 1934, increased ten per cent over 1933, yet the total insurance in force in all companies was less at the end of 1934 than at the end of 1929."

Again:

> "During the last five years, the companies as a whole have paid to policy owners and their beneficiaries, over 15 billion dollars more than half of it to living policy holders."

Counsel for the respondent respectfully submits that if in five years, the living policy owners of life insurance companies have withdrawn in cash on account of their policies, over seven billion dollars, it cannot fairly be said that we are not in a state of financial depression, for life insurance is the last asset a man surrenders.

The report further calls attention to the fact that in 1934, the liquid securities of the company were increased by $11,514,000, and then adds: "Only in times of great depression does a life insurance company need to have any considerable percentage of its funds invested in liquid securities."

The report continues: "In 1934, we sold direct or *disposed of through Government agencies*, over $4,000,000.00 of properties and mortgages * * *."

We are also advised: "It has been the experience of life insurance companies which passed through previous panics that the losses sustained on foreclosed properties sold in the first five years of recovery were offset by profits on the better properties sold in later years. Every piece of real estate, except the Home Office property represents a property foreclosure or in effect, a property purchased by us, *at a sacrifice price*. The present mild inflation and business improvement is already benefiting those properties."

Why should lienholders secure all the gain derived from purchasing properties at "a sacrifice price," and all the benefits derived from an improvement in business conditions?

The report states:

CHANGES IN PREMIUM RATES

You have perhaps noticed in the press that several of the large companies have changed the rate of interest used in their basis of valuation. These companies are all participating companies and there are many practical reasons why a participating company should make this change. None of the large non-participating companies has made a change in the rate of interest used in its basis of valuation. However, some of these companies have made substantial increases in their premium rates and have reduced their surrender values. In July of 1934, we issued a new rate book with modified surrender values and with minor changes in premium rates. We have the question of further changes in premium rates and values under careful study at this time.

Why all this if there be no depression, as the lienholder in the case at bar contended in the District Court?

We quote further from the report:

Our greatest problem now is to find safe investments that will net us an interest return in excess of that required to accumulate our policy reserves.

The officers of your Company devote their entire time and attention to its business. Through the depression the organization has been held intact and, after the gruelling experiences of the past few years, is better able than ever before to serve intelligently the best interests of policy owners.

We express our deep appreciation to our policy owners and to

their friends, the agents, for their loyalty to The Lincoln National during the recent unsettled years, and in return we pledge you ours.

A recent newspaper article says:

LEWIS DOUGLAS' FEAR—U. S. DICTATOR AFTER SPENDING

Ex-Director of Budget Warns of Ruined Currency and Revolt

Philadelphia, March 14 (AP)—Destruction of the nation's currency and "middle class" population and possible establishment of a dictatorship were regarded today by Lewis Douglas, former director of the federal budget, as ultimate possibilities in a continued policy of governmental spending.

Douglas resigned his budget post under the Roosevelt administration.

A Black Picture

In a criticism of the national administration's "spending policies" and the "increasing deficits in the federal budget" Douglas painted an "extremely black and forbidding picture of events" which can follow continuance of such a fiscal course.

He said:

"If the spending policy continues, quite irrespective of the disguised and concealed inflationary methods which have been employed; quite irrespective of the absence of the standard tests of government credit; quite irrespective of the amount of gold which we may hold, the effect must be catastrophic."

Chicago Tribune, March 5, 1935, states that 2,500 reorganization proceedings under Section 77B are pending in New York City.

W. M. Kiplinger and Frederick Shelton have issued a publication entitled "Inflation Ahead," to which the attention of the court is directed. This pamphlet is devoted to the proposition that inflation of the currency is at hand and attempts to show how a skilled investor may take advantage thereof. The advice of the authors in view of the impending inflation (as they view it), is to acquire tangibles "such as farm lands."

In the "Wall Street Journal for March 5th, 1935, is a review of the new amendments to Section 77, which are included in Railroad Coordinator Eastman's program, and which have been revised by the House Judiciary Committee.

This provides *inter alia*

"2. Elimination of the provision that fixed charges

of the new company shall not exceed 80% of the earnings available for such short charges in the three years of the lowest income of the period decide to a provision that fixed charges shall be reduced to such an amount as may be adequately covered by probable earnings."

The Home Owners Loan Corporation has already loaned $3,000,000,000.00 on homes, and an effort is now being made to secure additional authority for $1,500,000,000.00. Minnesota is extending its mortgage moratorium act, and Iowa has enacted a similar one.

The situation is serious and rapidly growing more serious. In the "Chicago Tribune" for March 25th, is the following heading, "Congress Turns to Inflation as Prosperity Lure," and the article says, *inter alia*:

"With confidence waning in the New Deal's recovery expedients, congress is turning toward currency inflation as a last resort to superinduce the return of prosperity. The old hard times cry for more and cheaper money has become a swelling chorus on Capitol hill."

JOINT STOCK LAND BANKS

Joint stock land banks have found it necessary to scale down their indebtedness. In fact a number have gone into the hands of a receiver and settled for their bonds at much less than par.

On page 44 of the Fifteenth Annual Report of the Federal Farm Loan Board for the year ending December 31, 1931, is the report of the Kansas City Joint Stock Land Bank receivership, one of the largest in the system. Total liabilities exceeded $44,000,000.00.

This bank liquidated its entire indebtedness at 57.01 percent on the dollar to its bondholders. On page 47 of the same report is the statement that the Ohio Joint Stock Land Bank paid to its bondholders a total of 57.38 percent.

Others have secured scaledowns without a receivership! Burlington Joint Stock Land Banks offered 35c

on the dollar, plus accrued interest for half its bonds, Lafayette Joint Stock Land Bank called half its bonds at 67 for the 5's, and 66 for the 4's, and Minneapolis Joint Stock Land Bank paid $700.00 cash per $1000.00 bond in full settlement.

In the "Comparative Analyses" of the joint stock land banks, issued by Webster Kennedy & Company, 40 Wall Street, New York, N. Y., (specialists in Joint Stock Land Bank Bonds,), under date of September 8, 1933, it is said:

"Manifestly, many of these institutions may have to face a crisis in the next few months. In our bulletin of May 20th we stated that reorganizations were necessary and imminent. Since that time two plans have been successfully consummated, another was attempted but failed signally to get bondholders' support. This failure probably spells the end of the Des Moines type of reorganization and the next step will probably take the form of a request for voluntary interest reduction on the part of the bondholders."

That this was no idle prophesy, is demonstrated by the fact that a number of the joint stock land banks since then have asked for tenders of bonds at stipulated prices far below par, as above stated.

An interesting review of the difficulties of the joint stock land banks is contained in a memorial to Congress by Everett Sanders, dated October 26th, 1931, in which he says, p. 22:

"In the year 1930 the total farm-mortgage debt of the United States represented about 22 per cent of the value of all farms, compared with only 10 per cent in 1910 (Report of Secretary of Agriculture, 1930, p. 36). Due to the agricultural depression with its reduced farm-commodity prices and its reduced farm land valuations, many loans that had seemed secure when made have proved uncollectible. This has greatly reduced the revenue of joint stock and Federal land banks. They have been forced, much against their will, to acquire a large number of farms. The banks are not organized to operate or rent these farms and they can not sell them at the market price without incurring further loss. The farm loan system was not designed to absorb these heavy losses."

In proof of the fact that Frazier-Lemke cases do not constitute any undue burden to the joint stock land

banks, attention is called to the following extract from "Financing Agriculture in 1934," by the Farm-Credit Administration. It is stated, page 23:

Joint Stock Land Banks

"The Emergency Farm Mortgage Act of 1933 provided for the liquidation of joint stock land banks which are privately capitalized institutions organized under the Federal Farm Loan Act passed in 1916. Like the Federal land banks, they make long-term amortized loans on first mortgages on farm real estate from funds obtained primarily from the sale of bonds to the investing public.

During the period from organization to April 30, 1933, the last month-end before the banks were placed in liquidation, more than 130,000 loans, for approximately $900,000,000, were made by these banks. During the same period, joint stock land bank bonds in excess of $800,000,000 had been sold to the investing public. As of April 30, 1933, the 45 operating joint stock land banks held 74,737 loans, in the amount of $390,101,036. As of December 31, 1934, the number of loans had been reduced to 47,119 and the amount to $232,862,612. This represents a liquidation of 40.2 percent on the basis of the amount of unmatured loans oustanding, most of which has been effected through the refinancing and purchase of loans by the Federal land banks and the Land Bank Commissioner. During the same period bonds in the hands of investors and notes payable were reduced from $419,810,184 to $279,404,577, or 33.5 percent."

No showing is made as to the number of Frazier-Lemke cases that may be filed, nor how they affect joint stock land banks. But we submit that under no stretch of the imagination can it be a serious matter to these institutions, whereas the injury to the nation is incalculable if the farmers are evicted.

This subject was exhaustively debated in Congress. Evan Clark's book, "The Internal Debt of the United States," was accepted as authoritative. He estimated that all the insurance companies combined held about $2,146,000,000.00 of farm mortgages.

In the "Wall Street Journal" for July 3, 1934, Governor Myers of the Farm Credit Administration stated only 14 percent of the commissioner's loans, which are made to the most heavily indebted farmers, were delinquent. Two thirds were for less than 30 days.

It is probable that even under present prices, the entire loss to the mortgage holders will not exceed 10 percent of the face amount of the mortgages.

A tidy sum, we admit, but one that the farmer is not responsible for, and insignificant compared to his

importance in the general economic scheme, and very small compared to the $3,500,000,000.00 loss in public utility investments the last year alone. The mortgage holders will minimize any loss just as the Farm Credit Administration has pointed out, (see subsequent quotation) if they will permit the farmer to remain on his farm, and permit him to buy it back at the full appraised value. If they take it over, it is possible their loss will be much greater before they are through. In the meanwhile the farmers, most of whom are past the prime of life, are pauperized.

WHITHER FROM HERE!

In the "Chicago American" for March 25th, 1935, B. C. Forbes, a well known financial writer, says:

"The New Deal was voted into power mainly on promises to restore prosperity, to enable the working classes to enjoy "life more abundant."

Alas, two years of New Deal activities find virtually one person for each family in the United States compelled to undergo the humiliating experience of subsisting on public charity.

More: The securities owned by upwards of 20,000,000 individuals and families who saved money have lately been shrinking disheartteningly in value; they have this month reached new low depths for the year, far below their market worth twelve months ago. The monetary loss suffered by one group alone, investors in public utility securities, is authoritatively computed at $3,500,000,000 – three thousand five hundred millions of dollars.

No satisfactory progress is being made in reabsorbing the many millions of idle wage-earners, notwithstanding that since the present administration took office our federal debt has soared some ten thousand million dollars.

No important new enterprises are being launched to employ labor.

Capital raising has been practically at a standstill. Of late, such accepted economic yardsticks as railway freight, steel production, as well as security values, have been reflecting diminishing activity and confidence."

There has been published in one of the great newspapers of the country, "The Chicago Daily News" for Monday, March 4th, 1935, a study of the original aims and present results of the administration's attempts to lift the country out of the depression. It is true that this review is published in a paper that on the whole,

is in opposition to the present administration. Yet the "Chicago Daily News", is one of the great newspapers of the world, recognized as such, and going among its hundreds of thousands of readers necessarily can not present only one side of a national problem such as exists at the present. Space does not permit the reproduction of all of this interesting review. The following quotations speak for themselves:

We quote from Chicago Daily News, Monday, March 4, 1935:

"On the second anniversary of the taking of office by the Franklin D. Roosevelt administration, The Daily News presents the following studies of the original aims and present results of the four essential sets of New Deal policies: Those relating to money and credit, to unemployment and industrial relief; to industrial labor relations, and to farm relief.

MONEY and CREDIT

The Policies:

The democratic campaign platform of June 29, 1932, pledged a cut of 25 per cent in federal expenses, a budget balanced annually, and a "sound currency to be preserved at all hazards." But these aims, though solemnly promised, were quickly abandoned. In the stress of the banking crisis the export of gold was forbidden, all gold in the country was seized by the government, the dollar was allowed to depreciate, and presently a stabilization agreement with Britian was sought. But inflationists ideas were gaining ground. Congress gave the president power to devalue the dollar by 50 per cent, at his discretion. The gold clause in public and private contracts was abrogated.

The Results:

Neither the gold, the silver nor the credit policies of the administration have achieved the results hoped for. The devaluation of the dollar has been a drag on world prices, and has slowed up recovery, just as did the devaluation of the British pound sterling.

The silver purchases gave a kind of subsidy amounting to millions of dollars to small groups interested in silver production or speculation, but cannot be shown to have helped the country as a whole in any particular. Our trade with China, far from increasing in consequence, is decreasing, because our boost of silver prices is violently deflating that country.

The 1926 commodity price level has not been attained. The commodity index two years ago was about 62—taking 1926 as 100. At the first of this year it was about 76. The increase, due partly to the drought so far as farm products are concerned, amounts to only some 22 per cent, whereas the dollar has been devalued by 41 per cent. In other words, in terms of gold, American commodity prices are lower now than they were two years ago.

The intended credit inflation has not yet taken place, either. The total of net demand deposits in the member banks of the

federal reserve system was about $13,000,000,000 two years ago. It is now about $19,000,000,000. The difference of $7,000,000,000 is a rough measure of the amount of uninvested savings which has piled up unused in the banks for lack of confidence on the part of business men and other investors. Federal tax collections in these past two years have increased by more than $1,000,000,000. And whereas previously only 46 per cent of the total federal income was derived from various sales taxes paid by consumers, the percentage of federal sales taxes is now 62 per cent of the total income.

The national debt in the brief space of two years has been increased from $22,000,000,000 to $33,000,000,000, to which may be added several billions more in contigent liabilities. The budget is hopelessly out of balance. A large annual deficit is forseen. And no effort is announced either to work toward an eventual balancing of the budget or an eventual firm stabilization of the dollar. On the contrary, the inflationists are still at work, and rumors are even now being spread of some new future devaluation.

Unemployment and Industrial Relief

The Policies:

The major New Deal policies designed to end unemployment and to maintain the jobless and destitute pending their restoration to work and wages were:

(1) NRA, set up under the national industrial recovery act NIRA. By reorganizing business under codes, it was proposed to end unfair competition and thereby prevent wage-cutting and long hours. This, it was promised, would provide additional purchasing power to stimulate the demand for goods so that industries and trading establishments would rapidly re-employ the jobless.

(2) PWA, under the administration of Harold Ickes, carried out on a vastly enlarged scale the plan for employing labor on public works that had been incorporated in the 1932 recovery laws adopted by congress under President Hoover. In addition to the money left over from that program that was only getting under way, $3,300,000,000 was appropriated for PWA. In June congress appropriated another $400,000,000. Mr. Ickes has had the spending of a sum equal to almost twice the amount that was used to carry on the Civil War.

(3) Failure of NRA to solve the unemployment problem by the fall of 1933 led the emergency public works program, carried out under Harry L. Hopkins. This came to an end in April, 1934.

(4) FERA. Failure of state and local funds led to the direct grant of money from the federal treasury for the relief of the jobless and destitute, whether employable or not. This relief has been supervised by the federal emergency relief administration under Harry L. Hopkins, the administrator also of CWA. The character of relief has varied according to locality. Cash relief, work relief, relief by direct allotment of food, fuel, clothing and rent, and more ambitious projects such as the Ohio plan for the manufacture of goods needed by persons on relief, have been parts of the varied system under FERA direction.

The Results:

There are no official or complete figures on unemployment, but several careful monthly estimates are made by various agencies. These estimates are based in part on the statistics gathered from a large number of industrial and commercial establishments by the United States Bureau of Labor Statistics. On the basis of those figures and supplementary data, the American Federation of Labor

estimates the number of unemployed in the country to have been in March, 1933, the beginning of the New Deal, 13,689,000. A year later the number is estimated to have been 10,849,000. The latest estimate is for December, 1934, and places the number at 11,329,000.

The National Industrial Conference Board, an employer's organization, makes more conservative estimates. Its estimate of the number of unemployed in March, 1933, was 13,175,000; in March, 1934, 9,137,000, and in December, 1934, 9,602,000.

No official government count or estimate of the total unemployment of the country has been made since the unemployment census of 1930, but on Feb. 25 an estimate was given out by government publicity men as part of a sixty-eight page report on the operations of the national recovery act. The report was attributed to the National Emergency Council, one of the numerous New Deal committees, and it contained an estimate of unemployment prepared by Prof. Winfield Riefler, recently resigned economist of the council. The Riefler estimates placed the number out of work in December, 1934, at 10,830,000. The peak of unemployment was set at 13,597,000 in March, 1933. The estimate claimed that 3,536,000 had been put back to work under the New Deal, but as 769,000 more persons had become of working age in the same period, the net decrease in unemployment under the New Deal was only 2,767,000.

While this staggering burden of unemployment persisted, the number of persons on relief is reported by the federal emergency relief administration to have been in July, 1933 the first month for which a comprehensive count exists 15,282,000. Because of the CWA, the number fell to 11,105,000 in January, 1934, after which it increased to 13,639,000 in March, 1934; 17,398,000 in May, 1934; 18,622,000 in September, 1934. The number was 19,500,000 in December, 1934, according to a preliminary estimate, the last available.

NRA—

Gen. Hugh Johnson promised to put 4,000,000 additional men to work under the Blue Eagle by Labor Day, 1933. Results fell so short of the general's hopes that CWA was launched shortly afterward.

The course of industry, employment and pay rolls under the New Deal can be traced in the indexes of industrial production prepared by the federal reserve board and in the indexes of employment and wages prepared by the United States Bureau of Labor Statistics. These indexes are based on the average production, factory employment and factory pay rolls of the three years 1923, 1924 and 1925, rated as 100 per cent.

At the beginning of the New Deal, in March, 1933, production stood at 60, employment at 59 and pay rolls at 37 per cent of the 1923-1925 average. In July, 1933, before NIRA had gone into effect and with a lively fear of inflation and higher production costs ahead, production stood at 96, employment at 72 and pay rolls at 51. In March, 1934, production stood at 86, employment at 81, pay rolls at 65. In July, 1934, production was at 73, employment at 79, pay rolls at 61. In December, 1934, production was up to 78, employment to 78 and pay rolls to 63.

PWA—

On Feb. 10, 1935, Harold Ickes, PWA administrator, reported that of 18,817 projects undertaken 10,129 had been completed. Construction is now in progress on 6,378 projects, and 2,310 have not been started. Projects embrace highways, water works, dams, power plants, schools, sewers, hospitals, housing, coast guard vessels, national defense construction—including $238,000,000 worth of ships for the navy—public buildings and railroad improvements.

The value of the completed projects is set at $432,000,000. The value of projects under construction is set at $1,920,000,000. Total allotments for federal projects carried out directly by PWA have been $1,777,825,105. Allotments for nonfederal projects carried out by local governments, railways and other private corporations total $985,681,949.

About half the nonfederal allotments were grants of only 30 per cent, the favored local governments borrowing the remainder. From PWA funds there has been paid out $906,045,166 for the CWA, CCC, and other agencies not necessarily building permanent works.

On Nov. 18, 1934, a press release of PWA made the claim that approximately 2,000,000 persons were gainfully employed, either directly on PWA works, or indirectly in the extraction and fabrication of materials used in PWA construction.

On the Columbia river and at other sites PWA is engaged in the construction of hydroelectric works which, added to those undertaken by TVA, and proposed on the St. Lawrence river in the seaway treaty not yet ratified by the United States senate, would practically double the amount of horse power of electrical power installed in the country. But much of this power is remote from present markets for electrical energy.

CWA—

This is now a practically closed chapter of the New Deal history. Its official end was March 31, 1934, when it had 2,133,00 men in its army of emergency workers, many of whom were employed on jobs that were admitted to be of doubtful value, the main idea being to shift men from the passive dole to a more active life. At one time 4,000,000 men were on CWA pay rolls. Its weekly average employment was 3,000,000 men. CWA began with an allotment of $400,000,000 of PWA funds and was soon costing the government $50,000,000 a week, when widespread charges of graft and scandals, popping out all over the country, brought about a determination in Washington to end it forever in the spring of 1934. At the end, when CWA was merged into the much smaller "works division" of FERA, Mr. Hopkins estimated that CWA had spent $750,000,000 on wages and $250,000,000 on materials—about $1,000,000,000 in all. On cash relief, it was then estimated, the same number of people could have been supported for the same length of time for $510,000,000.

FERA—

The work of FERA is familiar to practically all citizens. It is now supporting, from public funds raised by taxation and borrowing of federal, state and local government units, almost one out of every six persons in America—a population greater than that of Australia and Canada combined. Total cost of all the relief distributed under FERA auspices cannot be stated except approximately at this time, but it runs in excess of $100,000,000 a month and is believed to have been as high as $120,000,000 in some months. In some states the expenses per person on relief has been increasing so that there is no decrease in total outlays even where there is a decline in the number on relief.

It has been unofficially estimated by newspaper men who have interviewed Harry L. Hopkins on the subject that Mr. Hopkins has spent since May 23, 1933, $3,000,000,000 on all forms of relief, and is now disbursing up to $5,000,000 per day from all sources and on all forms of relief. On March 1, 1935, Mr. Hopkins raised the estimate of the total number of persons on relief to 20,000,000, announced that the huge sum of $525,000,000 voted last year for the relief of drouth-stricken farmers was nearly exhausted and expressed

the hope that the peak of unemployment and the relief burden would be reached by April 1 of this year.

INDUSTRIAL LABOR RELATIONS

The Policies:

The essence of New Deal labor policy was embodied in section 7A of NIRA. It promised the workers that they should have the right to bargain collectively with their employers by means of representatives chosen by the workers themselves.

This promise, supported interpretatively by many New Deal spokesmen, gave organized labor and its liberal sympathizers the impression that the trade-union movement was to enjoy the unprecedented position in the national life and that the wage earner was to draw huge benefits in the way of shorter hours, higher pay and increased society security. Section 7A was supposed to be the Magna Charta of organized labor, underwriting the right of unions to organize. It was understood that it would do away with company unions, and enable the American Federation of Labor to unionize industries from which it has thus far been barred by intransigent employers or the indifference of the workers. President Green of the American Federation of Labor spoke of the prospect of unionizing 25,000,000 workers.

The Results:

The consequences of New Deal industrial relations policies have been disappointing to all concerned. From August, 1933, to August, 1934 (the last period reported), there was an increase of only 697,893 in the number of members of A. F. of L. unions, despite tremendous efforts of the unions' officials and favorable utterances by certain New Dealers. The total membership of the A. F. of L., as reported last October, was 2,824,689, as compared with the peak of 4,000,000 in August, 1920.

While figures for company unions are incomplete, there is reason to accept the estimate that their membership has increased at least twice as fast as has the A. F. of L.'s.

FARM RELIEF

The Policies:

The Democratic platform of 1932 strongly condemned "the extravagance of the farm board, its disastrous action which made the government a speculator in farm products, and the unsound policy of restricting agricultural production to the demands of domestic markets." The agricultural adjustment act virtually ignored that condemnation. It far outdid the farm board in the very things for which that board had been criticized.

Under this act the agricultural adjustment administration—the AAA—was set up. Its main business was its attempt to restrict the production of staple crops, with the purpose of adjusting supply to demand (domestic demand principally), and thus to raise the prices of farm products to what was called the "prewar parity" that is, the relation that prevailed prior to 1914 between the prices of what farmers have to sell and of what they buy.

The plans adopted conformed in general to the so-called "domestic-allotment plan" worked out by agricultural leaders of the corn belt. Crops were reduced by agreements with farmers to plow under or not to plant to the controlled crops certain percentages of their land. In return they received rentals for the unused land, or, as in the case of hogs, payments based upon the amounts by which they reduced normal production. These payments came from funds that were eventually to be returned to the treasury from the proceeds of processing taxes levied upon farm products sold to pro-

cessors, handlers, middlemen, wholesalers. The consumer was supposed to pay this tax eventually in the form of higher prices for farm products sold in final form at retail.

In addition to this elaborate plan of crop control applied to cotton, wheat, corn, hogs, tobacco and some minor crops, special measures were adopted to deal with the production and importation of sugar; the dairy industry was to be organized on a basis of "milk sheds" supplying great metropolitan districts and other groups of consumers

Special controls and agreements were provided for a great variety of minor crops, such as cling peaches, olives, citrus fruits and peanuts, while AAA also took some measure of jurisdiction over products that naturally compete with the products under its major controls, such as rayon.

Several emergency measures were added to the program originally undertaken—such as the emergency pig-killing program, the corn and cotton loans, and other measures adopted after a fall in prices in the summer of 1933, following preliminary inflationary price rises. The Bankhead act limiting the number of bales of cotton that could be grown, except for the imposition of a prohibitory tax, was not originally an administration measure, but was forced by southern cotton growers. That was true also of the Kerr act rigidly limiting the growing of tobacco.

Extensive refinancing of farm mortgages under the auspices of the federal credit administration did not appease the radical farm groups of the northwest, so the Frazier-Lemke law was enacted by congress to force farm-mortgage holders to make concessions to debtors or to submit to long delays in obtaining satisfaction of their claims in court.

Finally the incidence of the great drought of 1934 forced radical alterations in all the plans and procedure of AAA, and caused huge direct expenditures by the government for direct relief of drought-stricken farmers and for the purchase of cattle on farms to keep them for lack of feed and water.

The Results:

The general effect of the adminstration farm program can never be accurately assessed because an unforseen calamity, the great drought of 1934, suddenly wiped out most of the great accumulated surpluses because of which the restrictive program had been undertaken. That of itself, however, is an indictment of the whole theory of a planned agriculture upon which the program was based, because the impossibility of crop control was thereby revealed in a tragic manner. In addition to that, the records of the weather bureau show that in the northern states such deficiencies of past rainfall and subsoil moisture were already in existence, prior to the inauguration of AAA, as to indicate to competent planners the terrific hazard of the restrictions undertaken.

On the other hand, the drought undoubtedly saved the restriction programs from the burden of additional surpluses that might have been raised on the acres actually planted by farmers who co-operated in the restrictions and, by those who refused to reduce their acreages.

At the beginning of 1935, as the combined result of the drought and the restrictive measures of AAA, the nation found itself with 20,170,000 fewer hogs than it had the year before—the smallest number on farms in fifty years. This shortage was caused partially by the purchase and slaughter of some 200,000 brood sows and some 7,000,000 baby pigs in the last months of 1933, when a virtual panic seized the AAA because pork prices had failed to rise after imposition of the processing tax. Farmers for a time were paying the tax themselves in the form of reduced prices for hogs. Before

the drought some Iowa hogs were nearly all "tax" and very little "pork"—hogs were bringing $2.80 per 100 pounds at the farm gate, while the processing tax had been raised to $2.25 per 100 pounds.

The nation's herds of cattle and calves were reduced last year by 7,523,000 head. In drought areas the government bought 8,186,962 for $108,335,823. Of these 1,424,879 were condemned as unfit for human food and destroyed on the farm.

The herds of sheep, lambs and goats were reduced by 2,446,000 head. The government spent $5,135,051 to buy up drought-distress sheep and goats.

The farm value of the 1934 crops was estimated by the department of agriculture at $4,782,626,000, an increase of $668,361,000 over 1933—a purely monetary gain accomplished by a holocaust of real wealth. The corn crop shrank from 2,581,658,000 bushels to 1,380,718,000, the smallest harvested since 1894. The wheat crop totaled 496,469,000 bushels, almost a record low since the United States became a great nation. The oat crop was barely a third of normal. The cotton crop of 9,731,000 bales was less than the upper limit set by the Bankhead law—which proved to have been unnecessary to attain its objects. Only in potatoes was a substantial gain recorded in staple crops. Today the United States is importing cattle from Canada and Mexico, corn and oats from the Argentine, corn from the Danubian lands of Europe, rye from Poland and Russia, butter from New Zealand, Argentina and Canada, and even eggs from our Canadian neighbors.

Attainment of Parity

The bureau of agricultural economics on Feb. 1, 1935, claimed that the program of raising farm prices to "prewar parity" had arrived at this point: "There are now fourteen commodities defined as 'basic.' For seven of these there are adjustment and processing tax programs in effect. The prices of these fourteen commodities averaged 52 percent of prewar in February, 1933, compared with 55 percent for all farm products. During the period August, 1933, to March, 1934, they remained within a range of 73 to 80 percent, and during the last quarter of 1934, due largely to the drought, they averaged close to the prewar level, as did the average of all commodities.

"Processing taxes, considered as additions to prices received on domestic allotments, when paid out as benefit payments, added approximately 30 percent to the December, 1934, price level of the seven 'basic' commodities on which they were collected and about 17 percent to the price level of the fourteen 'basic' commodities. Compared with prices paid by farmers, or 'parity' prices, at 126 percent of the prewar level, these 'basic' farm products, exclusive of benefit payments, had a purchasing power of about 80 percent, and, including benefit payments, 91 percent."

"Prewar parity" has not been attained, despite subsidy, restriction and a drought that reduced the nation's farm yield by half.

Finances of the Program

On Jan. 12, 1935, the total of government benefit payments to farmers participating in crop control plans, by acreage reduction and otherwise, was $580,772,564. Collection of processing taxes on Jan. 8, had reached a total of $647,550,788.

However, this "self-financing" of the control program does not embrace money spent for drought relief and seed conservation, which up to Dec. 1, 1934, totaled $160,384,043, and does not embrace other millions spent by FERA for rural unemployment relief, much of which was made necessary by the unemployment of farm hands and

share-croppers ousted from their jobs as a result of the curtailment of crops.

Government loans on corn and cotton are repayable, of course, and, because of the price rises since the drought, have been either repaid or can now be considered liquid. So far as the refinancing of farm mortgages by FCA can be considered in the same light as the refinancing of urban mortgags by HOLC—a real-estate investment by the government.

Payments of AAA benefits by commodimties have been as follows: Cotton, 1933 program, $122,739,150; 1934 program, $93,803,3074 exercise of cotton options, $12,175,445; cotton option pool, $30,318,288; tobacco, 1933 program, $2,051,089; 1934 program, $16,776,537; wheat, 1933 program, $89,189,046; 1934 program, $54,705,861; cornhogs, $159,957,478, and sugar, $55,541.

Processing tax collections up to Dec. 1, 1934, were: On wheat, $170,039,906; cotton, $185,242,286; tobacco, $30,216,488; corn, $7,585,756; hogs, $162,325,356; paper and jute, $11,113,857; sugar, $27,735,858; peanuts, $582; cotton-ginning tax under Bankhead act, $45,034; tobacco growers' sales tax under the Kerr act, $458,705.

CONCLUSION

The material result of two years under the New Deal can be briefly summarized as follows:

The dollar reduced to 59 cents in terms of its former value and still not formally stabilized.

The national debt increased from $22,000,000,000 to $33,000,000,000 by June, 1935.

The budget out of balance by several billions a year.

The number of unemployed reduced from perhaps 13,000,000 to perhaps 10,000,000.

The number of individuals on relief increased to about 20,000,000.

Some $18,000,000,000 of net demand deposits lying idle in the member banks of the federal reserve system, due to lack of confidence.

The burden of taxes steadily increased and bearing ever more heavily on the population as a whole.

A rapid increase in the cost of living, out of proportion to increases in wages and other income.

A shortage of certain farm products, leading to importations of cattle and grain.

The commodity index still nearly 25 percent short of the 1926 level, despite a 41 percent devaluation of the dollar; and the ratio of what the farmer sells to what he buys still below the prewar parity.

AGRICULTURE IS THE ANSWER!

Alexander Hamilton put Agriculture First!! President Wilson emphasized its importance in the National Economy.

Recently—

RECOVERY HINGES ON FARM GAINS, SAYS RAIL CHIEF

Sargent Asserts Growers Should Be Aided First

Clinton, Ia., March 15.—Criticising the New Deal for having confused zeal for reform with sound, constructive efforts toward recovery, Fred W. Sargent, president of the Chicago & North-

WHAT PRICE AGRICULTURE!

President Wilson, in his inaugural address delivered March 4, 1913, directed the attention of the country to the fact that the agricultural industry should be "afforded the facilities of credit best suited to its particular needs." In his First Annual Address to Congress, delivered December 2, 1913, the President presented to the Congress the urgent necessity of making special provisions for facilitating the credits needed by the farmers of the country.

Said President Wilson:

"It has, singularly enough, come to pass that we have allowed the industry of our farms to lag behind the other activities of the country in its development. I need not stop to tell you how fundamental to the life of the Nation is the production of its food. Our thoughts may ordinarily be concentrated upon the cities and the hives of industry, upon the cries of the crowded market place and the clangor of the factory, but it is from the quiet interspaces of the open valleys and the free hill sides that we draw the sources of life and pros

Western railway, said tonight that only through solution of the age old farm problem will other problems be solved.

Many things are being done, he told the Clinton Chamber of Commerce, that are probably retarding rather than hastening the day of business revival.

Sargent recommended a farm program of greater diversification and utilization of all reasonably profitable land for crops now grown only in a small way. Recent efforts of the government were probably necessary as an emergency measure, but they do not constitute a permanent remedy, he declared.

Farmer Gets Less

"Since 1909 the American farmer has been receiving a constantly lesser percentage of national wealth," the rail chief asserted. "He has been overwhelmed with debts and service charges on debts. He has not been able to buy or develop his property as he would like to.

"If the farmer becomes prosperous he offers the greatest potential market for manufactured goods and his purchases will make industry prosperous.

"He cannot become prosperous nor can all our people have more wealth distributed among themselves by an economy of scarcity in the form of nonproduction. A program of diversification and utilization is not spectacular nor rapid, but it will build a permanent farm economic prosperity.

perity, from the farm and the ranch, from the forest and the mine. Without these every street would be silent, every office deserted, every factory fallen into disrepair. And yet the farmer does not stand upon the same footing with the forester and the miner in the market of credit. He is the servant of the seasons. Nature determines how long he must wait for his crops, and will not be hurried in her process. He may give his note, but the season of its maturity depends upon the season when his crop matures, lies at the gates of the market where his products are sold. And the security he gives is of a character not known in the broker's office or as familiarly as it might be on the counter of the banker."

Congress authorized the President of the United States to appoint a Commission (known as the United States Commission) to investigate and study rural credit systems in European countries, and appropriated public moneys for the expenses of the Commission. The Commission was duly apointed and its members, together with a clerical staff, made extensive investigations in Germany, Italy, Hungary, Austria, Russia, Denmark, Belgium, Holland, France, England, Wales, Scotland, and Ireland. The report of this Commission which was submitted on January 28, 1914, afforded the foundation for our present farm loan system, which is based largely upon the rural credit systems of Europe, particularly that of Germany. This report indicates that the financing of our farms is a national and Governmental problem. The Commission said:

"Agriculture has been the one great national industry which has been without organization and has been absolutely helpless before the wonderful growth of our Nation. *Therefore the financing of our farms has become a national problem.* * * * This can be done only by wise and patriotic legislation. Farm securities must be honored by Nation, by State, and by individual." (Italic ours.)

The banks of the Federal farm loan system were "created for public and national purposes." Their creation was not authorized for private purposes or for their own sakes. They were called into existence to accomplish the important national purposes described in the title of the Act, to wit:

> "To provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to equalize rates of interest on farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Millions of dollars of public money are appropriated annually to aid and promote agriculture on the ground that it is for the general welfare. Fostering our greatest basic industry has always been considered a public function. The joint stock land banks and the Federal land banks were created for the purpose of enabling farmers to carry on their operations which are "essential to the general welfare." Senator Thomas J. Walsh in an address entitled the "Federal Farm Loan Act" (Senate Doc. 524) delivered before the Ohio State Bar Association on July 6, 1916, said:

> "It is quite obvious from the bill itself, as well as from the prevailing conditions, of which notice may be taken, that the primary consideration upon which Congress acted was * * * to afford facilities to citizens engaged in the basic industry of agriculture to secure credit with which successfully to carry on their operations *so essential to the general welfare* * * *." (Italics ours.)

The Federal farm loan system was inaugurated by President Wilson with a public address calling the attention of investors to the soundness of the securities

issued under the Act. The bill was signed on July 17, 1916, in the presence of a large number of Senators, Congressmen and representatives of farmers' organizations, including the National Grange, the Farmers' Educational and Co-operative Union, the Farmers' Society of Equity, the Ancient Order of Gleanors, the Farmers' National Congress, and the National Council of Farmers' Co-operative Association. Just before signing the measure the President made a short address pointing out the benefits which he believed both farmers and investors would enjoy under its operation.

Said President Wilson:

"On occasions of this sort, there are so many things to say that one would despair in saying them briefly and adequately, but I can not go through the simple ceremony of signing this bill without expressing the feeling that I have in signing. It is a feeling of profound satisfaction not only, but of real gratitude that we have completed this piece of legislation, which I hope will be immensely beneficial to the farmers of the country.

"The farmers, it seems to me, have occupied hitherto a singular position of disadvantage. They have not had the same freedom to get credit on their real estate that others have had who were in manufacturing and commercial enterprises, and while they have sustained our life, they did not in the same degree with some others share in the benefits of that life.

"Therefore, this bill, along with the very liberal provisions of the Federal Reserve Act, puts them upon an equality with all others who have genuine assets, and makes the great credit of the country available to them. One can not but feel that this is delayed justice to them, and can not but feel that it is a very gratifying thing to play any part in doing this act of justice.

"I look forward to the benefits of this bill, not with extravagant expectations, but with confident

expectations that it wil be a very wide-reaching benefit, *and incidentally it will be of advantage to the investing community, for I can imagine no more satisfactory and solid investments than this system will afford those who have money to use.*

"I sign the bil, therefore, with real emotion, and am very glad to be honored by your presence and supported by your feelings. I have no doubt in what I have said regarding it." (Italics ours.)

Evidently President Wilson considered the farmer a good credit risk! And justly so. He went through a panic for 14 years before Congress gave him the same relief it had hastened to give commerce after 3 years of depression.

In "The Agricultural Situation" for January 1, 1935, issued by the Bureau of Agricultural Economics, on page 18 is a table showing farm mortgage loans to farmers since 1929 by various lending agencies. This shows a decrease in farm mortgage loans to farmers by 39 life insurance companies, of $587,000,000.00 from 1929 to November of 1934; a decrease by banks of $122,000,000.00, and a decrease by joint stock land banks of $342,000,000.00, leaving outstanding only $285,000,000.00 by such agencies. On the other hand, Federal Land Bank loans have increased approximately $600,000,000.00, the Land Bank Commissioner's loans $587,000,000.00, Federal intermediate credit bank loans of various types and regional agricultural credit agency loans, including emergency crop loans, approximately $425,000,000.00.

As some indication of the extent of Federal refinancing, we direct the court's attention to the following extract from a pamphlet put out by the Farm Credit Administration, "Financing Agriculture in 1934," page 6:

"many instances, however, loans available from the Federal

land banks were not sufficient to refinance the burden of debt which had accumulated during the depression. Furthermore, the Federal land banks do not make loans on farms or in areas subject to special hazards. To provide for loans where these special risks were involved and to refinance first-mortgage loan, a fund of $800,000,000 was made available for making Land Bank Commissioner loans. Such loans are made upon the security of either first or second mortgages on real or personal property and may not exceed $7,500 to any one farmer. The amount of the mortgage to the Land Bank Commissioner, together with all prior mortgages or other evidences of indebtedness secured by the farm property, may not exceed 75 percent of the appraised value of the property.

PROGRESS MADE IN HANDLING APPLICATIONS

From May 1, 1933, to December 31, 1934, the Federal land banks received 905,299 applications, amounting to more than $4,100,000,000. As of December 31, 1934, 411,341 applications, or 45.2 percent of the total, including 3,844 applications pending on May 1, 1933, had resulted in closed loans and 76,108, or 8.4 percent, were pending as approved loans which had not as yet been closed. In addition, 166,252 applications had been approved, but later were canceled or withdrawn, principally because the applicant could not obtain the cooperation of his creditors in working out his debt problem or because he had worked out his debt situation without the necessity of refinancing. In all, 653,701 applications, or 71.9 percent of the total number received, had been approved for loans prior to January 1, 1935. Of the remainder, 197,812 were rejected, 26,471 were canceled or withdrawn before approval, and 3,159 were in progress through the banks but had not reached the loan committee on December 31, 1934.

The 411,341 applications closed as loans resulted in 225,477 Federal land bank loans totaling $870,505,803, and 350,393 Land Bank Commissioner loans amounting to $623,948,428; a total of 575,840 loans for $1,494,454,231.

HOW LOAN PROCEEDS WERE USED

Of the amount of loans closed, more than $1,000,000,000, or 71.8 percent, was used to refinance existing farm mortgages, 15.1 percent to refund short-term debts, and 3 percent to pay taxes (table 2).

Thus, 89.9 percent of the total amount loaned was used to liquidate prior indebtedness. The remainder was used to purchase stock in national farm loan associations; to provide working capital; to purchase, redeem, or repurchase land; to pay loan fees; to purchase equipment; and to repair or construct buildings and make other improvements.

MANY CREDITORS SCALE DOWN CLAIMS

Many farmers were so heavily indebted that maximum loans by the Federal land banks and Land Bank Commissioner were not sufficient to repay their outstanding obligations. In such instances, however, creditors were often willing to scale down the amount of their claims. In all, nearly 91,600, or 15.9 percent of all loans, were made to farmers obtaining scale-downs (table 3). The amount of principal scaled down amounted to approximately $75,000,000 or more than one-fourth of the prior debts of those farmers who obtained such reductions."

Now, in all these instances creditors agreed to be

humane, and got money, and the farmer stayed on the land! The Frazier Lemke Act is merely aimed at the "few unreasonable creditors!"

Yet, in the case at bar, the petitioner does not wish to do what other creditors throughout the nation, in a number of instances, have done. In this pamphlet it is also stated, p. 11:

CREDITORS HAVE BENEFITED

The farm debt refinancing program has had far-reaching effects. In addition to helping thousands of farmers to avoid the loss of their homes through foreclosure, funds made available through Federal land bank and Land Bank Commissioner loans have relieved the credit situation in other ways. Commercial banks have received more than $368,407,000 of loan proceeds in liquidation of mortgages and notes, thereby improving their ability to meet both withdrawals of deposits and demands for new credit. Other classes of creditors have strengthened their financial positions through the liquidation of mortgages, notes, and charge accounts. States and other taxing units have benefitted through the use of loan proceeds to pay taxes.

Every effort is being made to keep the farmer on his farm! !

A pamphlet put out by the Farm Credit Administration entitled, "Financing Agriculture in 1934," it is stated, page 14:

"Debt Adjustment Committees Formed

In the refinancing program, the operations of the local farm debt adjustment committee which were organized by the state governors in response to a suggestion by the Governor of the Farm Credit Administration have proved important. The principal function of these voluntary committees is to handle cases of excessive indebtedness submitted to them by either debtors or creditors with a view toward working out satisfactory settlements between debtors and creditors without resort to foreclosure. Committees have ben organized in more than 2,700 counties in 44 States and have successfully handled more than 40,000 cases involving approximately $200,000,000 of debts. The committees have been helpful to both creditors and

debtors and, since they serve without pay, deserve public support and encouragement for the good they have accomplished."

Under this law the Governor appoints the conciliation commission, consisting of three representative citizens, in each county of the state. These committees meet once a week for the purpose of attempting to harmonize the relations of debtors and creditors of the farmer. Under the Emergency Farm Mortgage Act of 1933, the Federal Land Banks have caused to be organized National Farm Loan Associations in every county in the state. This is typical of other states as well as Indiana. The purpose of these National Farm Loan Associations is to take applications and assist in refinancing farm mortgages. Thus a farmer who desires to refinance a mortgage on his farm, goes through the following stages:

1. He attempts to reach an agreement in the first instance, with the mortgage holder. Invariably he is told either to give a deed, or to apply for a Federal farm loan to refinance.
2. He then makes application to the National Farm Loan Association of the county in which he is a resident. This is forwarded to the Federal Land Bank having jurisdiction. That bank sends out appraisers. Ultimately the Federal Land Bank makes a commitment to the farmer, with certain conditions attached, such as "pay all debts", or, "pay liens against the land". The farmer then offers the amount of the commitment first to the mortgage holder. Usually the mortgage holder requests a reappraisal of the land in an attempt to squeeze out the last possible cent. Then comes the tug of war between the mortgage holder, who, oblivious of the fact that the Emergency Farm Mortgage Act made it mandatory upon the land banks to adopt the 1909-1914 standard as a basis for making loans, and thereby has created an arti-

ficial level for farm land prices, attempts to obtain the entire amount of the loan for itself. It takes the position that the loan is made on the land, and hence it is entitled to receive all of it. Such is not the fact, however. Loans of the Federal Land Banks are made on the farm plus the farmer. This is conclusively shown by the very deplorable policy of the Federal Land Banks in refusing to loan money to old women who own farms, and in the case of old men, in requiring that their children also sign the mortgage.

3. If the creditors can not harmonize, the National Farm Loan Association secretary, if he is onto his job, attempts to bring them together.

4. If the National Farm Loan Association secretary can't induce creditors to agree on the division of the booty, then the farmer files a complaint with the state county conciliation committee, who holds hearings. They hear evidence submitted on both sides, and make a recommendation, which, of course, is nothing more. In a vast majority of cases their efforts are unsuccessful. Frequently cases come several times before the county conciliation committees.

5. There is a state supervising conciliation commissioner who is a sort of trouble shooter. In certain cases he will add his personal efforts to the work of the committee. If he fails in harmonizing the various elements, then the farmer has only one recourse, and that is a petition under section 75 of the National Bankruptcy Act.

6. The procedure that counsel hergin from Indiana adopted, is, at the hearing on the section 75 composition petition, to make an offer to creditors based on the amount that can be obtained from the Federal Land Bank, plus other assets of the farmer. In no case has he been able to effect a composition. In fact, he is advised that out of the entire 279 cases which have been instituted in the Northern District of Indiana since the passage of the Frazier-Lemke law, that only three compositions have been effected. The experience in these cases

is that without exception, it is the large corporation mortgage holders who are unreasonable and obdurate. There are many cases in the writer's own personal experience where other creditors have agreed to completely wipe out their indebtedness so as to enable the debtor to peel himself down to the hide in order to offer everything to the greedy mortgage holder, in a last frantic attempt to save his farm. But without success.

7. Every attempt having failed, the Frazier Lemke petition is the last resort.

In "The Agricultural Situation" for March 1st, 1935, by the Bureau of Agricultural Economics, it is said on page 9:

"PRIVATE CAPITAL INVESTMENT IN AGRICULTURAL LOANS CONTINUE DECLINE IN 1934

Private capital, as represented by investments of life insurance companies, showed a smaller proportion in farm loans for the year 1934 than in any previous year. Twenty-five life insurance companies, having about 75 percent of the assets of all legal reserve companies, placed 1.6 percent of their investments in loans on farm property in 1934 as compared with 3.5 percent in 1933, and 10 percent in the years 1928-30. Investment in other real property loans also showed sharp declines.

Despite the proportionate decline in farm investments, the amount for 1934 slightly exceeded the sum so invested in 1933, owing to the pronounced increase in the total investments made by life companies as compared with the immediately preceding years.

The principal form of investment showing increases offsetting the losses in real-estate mortgages was that of Government securities which had increased to 77 percent in 1934 as compared with an average of 11 percent for the years 1928-30."

On page 10 at the top is shown the "Percentage Distribution of Life Insurance Investments, by Type, 1928-34." This is as follows:

PERCENTAGE DISTRIBUTION OF LIFE INSURANCE INVESTMENTS, BY TYPE, 1928-34

Compiled from weekly reports of 25 companies New York Evening Post and Wall Street Journal."

	Total	Farm property	Dwellings and business property	Railroad securities	Public utilities	Government securities	Miscellaneous securities
	Percent	Percent	Percent	Percent	Percent	Percent	Percent
1928 (6 mo.)	100.0	11.1	49.1	10.6	13.6	10.1	5.5
1929	100.0	8.7	43.3	8.4	7.4	11.3	20.9
1930	100.0	10.1	44.8	9.9	15.4	11.1	8.7
1931	100.0	7.6	36.5	10.3	20.4	20.1	5.1
1932	100.0	9.3	31.3	1.1	9.9	44.0	4.4
1933	100.0	3.5	3.7	3.5	6.5	80.4	2.4
1934	100.0	1.6	2.7	5.9	7.2	76.6	6.0

When it is considered that the statement has been made recently by an authority, that the decrease in values for the past year in the securities of public utility companies aggregates $3,000,000,000.00, and such investments in 1934 were 7.2 percent of the class of investments held by the largest investing group in the country, why should there be so much excitement over a bill that affects only 1.6 percent of the total assets of these companies, and yet means almost life or death to hundreds of thousands of such an essential portion of our population.

As an instance that nature frequently takes a hand in the agricultural depression, is the following news item concerning the recent sand storms, taken from the "Chicago Tribune" of March 24th, 1935:

"Fort Worth, Tex., March 23. (Special) Unless large scale protective measures are undertaken by the government, more than 75 million acres of what once was a highly productive agricultural area in the southwest will be reduced to a desert by soil erosion, caused by wind storms.

In the high plains area of Texas, Oklahoma, Kansas, Colorado, and New Mexico, hard winds and sandstorms have swept this spring in increasing intensity, stripping the top soil from millions of acres and bringing the spectre of impoverishment to farmers.

4 Million Acres Destroyed

H. H. Bennett, director of the federal soil erosion service, testifying before the house public lands committee, reported that wind erosion had destroyed 4,443,849 acres for further tillage and had done severe damage to 60,564,778 additional acres.

Discussing the need of a permanent soil erosion service, Bennett pointed out that the top soil had been washed off an additional 51,465,097 acres and that much of the land already had been abandoned."

The article continues:

"There has been three consecutive crop failures in the sand-swept area and farmers face a fourth. In 40 counties of the southern high plains region there are approximately 2,767,000 acres upon which no crop of any kind will be planted this year unless the government approves a program being advocated by leaders who realize the seriousness of the situation.

Good Land Now Waste

Thousands of acres that normally produced above average wheat crops now are sandy waste. Drifts of sand have been piled as high as barbed wire fences, destroying the strands. Where

wheat farms once abounded there remains only tufts of wild grass and sand banks.

So serious is the problem to them that 1,100 delegates from the five states in the area met last week in Dalhart, Tex., and asked the government to supply immediate funds to wage a fight against robbery of the soil by winds."

In the "New York Times" for Saturday, March 23rd, 1935, is the heading, "Great Dust Storm Threatens a Shift in Farm Program," and the article begins as follows:

"Washington, March 22. A major revision in the Federal Government's farm program impended today as a result of drought and dust storms in the Great Plains.

AAA officials and others concerned with land-use policies said privately that they saw in the present repetition of 1934 conditions a motivating factor that might force rapid purchase of millions of acres of land in the drought belt to undertake a vast soil erosion-prevention program."

But the 1934 Drought was no slouch.

In Webster, Kennedy & Company's review, a concern that specializes in joint stock land bank bonds, it is stated in their "Comparative Analyses" of September 27th, 1934:

"EFFECT OF THE DROUGHT

The importance of the drought and its effect on collections cannot be overemphasized. Twenty-four states were directly affected in varying degrees. Total damage to date is placed at five billion dollars. The drought helped raise commodity prices, yet this can reflect favorably only on those areas which entirely escaped the drought or where it was only a minor problem. In the states where crops have been almost completely destroyed the salvage will be pitifully small and the problems of the Joint Stock Land Banks loaning in those areas will be serious. The states most affected are.

NORTH DAKOTA AND SOUTH DAKOTA—all crops and livestock practically destroyed. 25% of the population in need of transplanting to better lands.

IOWA—southern portion: livestock almost complete failure—northern portion slightly better.

MISSOURI—literally paralyzed; corn crop is practical failure; pastures are barren; livestock must be shipped out of the State as fast as there is an outlet for it.

WISCONSIN—large area seriously drought-stricken, affecting especially pasturage and feed crops.

MINNESOTA—danger of dispersal of many small dairy herds seems inevitable.

NEBRASKA—pastures exhausted and lack of water serious problem. Corn almost complete failure.

KANSAS AND OKLAHOMA—fair wheat crop, but practically no corn; pastures gone except in

And we have seen estimated that the damage from the Great Drought of 1934 exceeded $5,000,000,000.00!!!

THE HONESTY OF THE FARMER

It is true that counsel writing this part of the argument comes from the corn belt, where he has personally observed the various phases of agricultural economics that are here discussed. And perhaps on that account it might be argued that his viewpoint is somewhat prejudiced. But in truth it is not. And every statement that is made can be corroborated by dozens, and even by hundreds, of instances in his own community. Neither his word nor that of isolated examples need to be taken. When the statement is made that the honesty of the farmer is proverbial, the court could well take judicial notice of that fact, but it is not necessary.

The various factors of the agricultural economic situation discussed herein have been much more comprehensively treated in a number of government publications, and particularly the attitude of the farmer towards his farm was especially noted in the "Fifteenth Annual Report of the Federal Farm Loan Board" for the year ending December 31, 1931, House Document No. 36. We wish to call to the court's attention the following extracts therefrom. Page 1:

"The great majority of the borrowers from the land banks have continued to meet the terms of their loans notwithstanding the low prices received for agricultural commodities. However, funds which many farmers had accumulated for paying current obligations and

mountains. Government purchase of livestock slowed down by market congestion.

NEW MEXICO, COLORADO, WYOMING AND MONTANA—dry farming and irrigated sections less seriously affected as they were better prepared for drought and recent precipitation helpful.

TEXAS—cotton averaging 70% of normal; costal regions, crops seriously damaged by storms. Panhandle country almost total failure. Range country badly

carrying on their operations have been tied up in closed banks, and the sources through which credit for these purposes would normally be obtained have been restricted by the commercial banking situation. It is the general policy of the banks to require the payment of maturing obligations, but when delinquencies occur to consider each loan in the light of the facts of the particular case and to institute foreclosure proceedings only when the borrower is not making an honest effort to meet his obligations or would not have any prospect of succeeding in doing so if given reasonable time. The banks have devoted special attention to collections and sales of acquired real estate in order that these problems may be dealt with as efficiently and intelligently as possible."

Another factor affecting the farmer is mentioned on page 5 with respect to the closing of banks. The report says:

"The decline in income without an equal reduction in necessary expenditures obviously reduced the ability of farmers to meet mortgage obligations from current income. In addition to this difficulty, in many instances funds which had been accumulated for the purpose of paying mortgage obligations have been tied up in banks which suspended operations. According to data compiled by the Federal Reserve Board, approximately 80 per cent of the banks which closed their doors during 1931 were in towns and cities of less than 10,000 population and represented, for the most part, country banks. Funds which farmers had on deposit in such banks naturally are not available for the purpose of paying operating expenses, or meeting obligations, until the banks are liquidated or reopened."

Still the farmer, with that indomitable industry and traditional integrity of his, carried on. The report continued, p. 5:

"Although, as indicated by these data, collections have fallen off, this reduction has not been as great as might have been expected in view of the loss of cash income and the unfavorable commercial banking situation. This record indicates a strong desire and determination on the part of borrowers to pay their debts and retain their farms. The fact that most families will exhaust every possible means of meeting payments before getting into a position where they are in danger of losing their homes is an important element of strength in land bank loans. Under the prevailing conditions, moreover, the efforts of many borrowers to retain their farm homes have been still further increased because of the unemployment situation in the cities and the difficulty in finding other means of earning a livelihood."

Some corroboration of the statement that the figures representing court foreclosures, do not even begin to tell the story of the number of farms that have passed into the possession of the mortgage holders, afforded

by the "Fifteenth Annual Report of the Federal Farm Loan Board." On page 6 it has a table which gives a summary of foreclosure proceedings "pending at beginning of period" and "instituted." Under the latter heads are included farms deeded directly to the banks by the borrowers. The figures are as follows:

In 1929, pending, 1,523, but instituted 4,756. In 1930, pending, 1,921, but instituted, 5,995, and in 1931, pending, 2,402, and instituted, 10,685.

On page 7 are the same figures for the joint stock land banks. Thus in 1931, they had pending 1,076 foreclosures, but there were "instituted" 5,916. Thus, roughly speaking, these banks acquired five times as many farms as they actually filed foreclosure proceedings against.

In this connection, statistics as to formal bankruptcies by farmers are of interest.

UNITED STATES DEPARTMENT OF AGRICULTURE
Bureau of Agricultural Economics
Washington, D. C.

January 16, 1935.

NUMBER OF BANKRUPTCIES AMONG FARMERS COMPARED WITH TOTAL OF ALL BANKRUPTCIES

(Cases concluded in fiscal years ending June 30)

State and geographic division	Total bankruptcies		Bankruptcies among farmers		Farmer bankruptcies expressed as % of all cases	
	1933	1934	1933	1934	1933	1934
	Number	Number	Number	Number	%	%
Maine	675	543	67	85	9.9	15.7
New Hampshire	101	141	13	10	12.9	7.1
Vermont	219	120	27	28	12.3	23.3
Massachusetts	2,278	1,786	21	20	.9	1.1
Rhode Island	256	183	4	3	1.6	1.6
Connecticut	1,263	1,400	32	25	2.5	1.8
New England	4,972	4,173	164	171	3.4	4.1
New York	7,865	7,955	219	185	2.8	2.3
New Jersey	1,894	1,607	20	27	1.1	1.7
Pennsylvania	4,151	2,474	275	208	6.6	8.4
Middle Atlantic	13,910	12,036	514	420	3.7	3.5
Ohio	5,540	5,623	644	443	11.6	7.9
Indiana	952	829	222	160	23.3	19.3
Illinois	4,903	4,737	815	527	16.6	12.1
Michigan	2,368	2,682	68	43	2.9	1.6
Wisconsin	1,475	1,508	271	211	18.4	14.0
East North Central	15,238	15,379	2,020	1,384	13.3	9.0

NUMBER OF BANKRUPTCIES AMONG FARMERS—(Continued)

State and geographic division	Total bankruptcies		Bankruptcies among farmers		Farmer bankruptcies expressed as % of all cases	
	1933	1934	1933	1934	1933	1934
	Number	Number	Number	Number	%	%
Minnesota	965	1,073	98	117	10.2	10.9
Iowa	1,211	889	561	395	46.3	44.4
Missouri	1,831	1,530	276	221	15.1	14.4
North Dakota	102	88	39	39	38.2	44.3
South Dakota	177	116	74	53	41.8	45.7
Nebraska	496	439	109	84	22.0	19.1
Kansas	583	334	120	74	20.6	22.2
West North Central	5,365	4,469	1,277	983	23.8	22.0
Delaware	108	58	42	18	38.9	31.0
Maryland	571	539	140	91	24.5	16.9
District of Columbia	191	195	0	0	0	0
Virginia	2,485	2,496	138	154	5.6	6.2
West Virgina	795	756	28	39	3.5	5.2
North Carolina	751	648	84	162	11.2	25.0
South Carolina	295	156	31	29	10.5	18.6
Georgia	2,382	2,069	124	195	5.2	9.4
Florida	550	325	14	10	2.5	3.1
South Atlantic	8,128	7,242	601	699	7.4	9.7
Kentucky	1,490	1,449	167	154	11.2	10.6
Tennessee	2,695	2,871	115	99	4.3	3.4
Alabama	3,421	2,024	167	100	4.9	4.9
Mississippi	563	353	45	46	8.0	13.0
East South Central	8,169	6,797	494	399	6.0	5.9
Arkansas	571	373	70	50	12.3	13.4
Louisiana	637	577	54	74	8.5	12.8
Oklahoma	969	578	48	41	5.0	7.1
Texas	1,641	942	199	164	12.1	17.4
West South Central	3,818	2,470	371	329	9.7	13.3
Montana	207	119	40	20	19.3	16.8
Idaho	136	89	34	34	25.0	38.2
Wyoming	99	66	5	9	5.1	13.6
Colorado	384	396	43	29	11.2	7.3
New Mexico	47	56	4	8	8.5	14.3
Arizona	83	46	6	9	7.2	19.6
Utah	292	212	35	21	12.0	9.9
Nevada	23	24	0	1	0	4.2
Mountain	1,271	1,008	167	131	13.1	13.0
Washington	950	794	88	37	9.3	4.7
Oregon	907	857	44	40	4.9	4.7
California	4,175	3,608	177	123	4.2	3.4
Pacific	6,032	5,259	309	200	5.1	3.8
UNITED STATES	66,723	58,833	5,917	4,716	8.9	8.0

With reference to the disadvantages of the mortgage holders operating the farms, and thus showing that it is better that the farms remain in the possession of the owner, is the following observation from page 29 of

the "Fifteenth Annual Report of the Federal Farm Loan Board":

"The banks have found from experience that they are not in a position to operate acquired farms on a basis which yields satisfactory returns above necessary expenditures. The farms which they acquire, as a rule, are scattered over their entire district and in such circumstances the cost of operation and supervision is high. Moreover, the returns from a farm operated from a distance rarely are as high as when operated by an interested owner living on or near the farm and giving its operation close and constant attention. Since the banks have bond interest and operating expenses which must be met, it is of the utmost importance that they avoid an accumulation of low-earning or non-earning assets. It is not the policy, however, to dump farms on the market indiscriminately, but to make sales only when satisfactory prices can be obtained."

The United States Department of Agriculture in its release for March 15th, 1935, entitled, "The Price Situation, March 1935", says, page 2:

"Business Conditions. Industrial activity reached a peak in the first half of February after a 5-month advance and then declined slightly so that industrial output made about the usual seasonal change from January to February. The marked advance in automobile production and allied industries since December has been earlier than usual, which accounts for the exceptionally rapid rise in the seasonally adjusted indexes of industrial output. While industrial activity on the whole is still increasing, the increase in recent weeks has been slackening. Present indications point to some recession in the seasonally adjusted indexes of industrial activity durig the spring months unless those lines of activity which have as yet shown but little improvement such as building, and replacements by railroads, increase materially in the near future."

The farmer is not in good shape. One may look at the relatively high prices of the various grains as compared to two years ago, but what good are they if the farmer has nothing to sell? We respectfully direct the court's attention to the following review issued by the United States Department of Agriculture in its publication, "Crops and Markets." For instance, the following extract from page 1 tells the story:

"General Crop Report as of December 1, 1934. Completion of the fall surveys of acreages harvested and production secured confirms earlier indications of an unprecedented loss of crops from drought. Taking the country as a whole, crop production, as estimated by the Crop Reporting Board of the Department, was about 22

percent less than production last year and 32 percent less than the average production during the previous 10 years. Chiefly because of the drought and the measures taken to control production, the acreage in crops harvested, estimated at 288,608,000 acres (excluding fruits) was below the acreage harvested last year by about 40,500,000 acres or 12 percent, and below the average acreage during the previous 10 years by nearly 19 percent. It was probably the lowest total acreage harvested in more than 30 years. On this greatly reduced acreage some exceptionaly low yields were secured, yields of field crops averaging about 15 percent less than last year's low yields and about 20 percent less than average yields during the previous 10 years.

The estimates for some of the crops are so unusual that it is difficult to make comparisons. The total corn crop as harvested for all purposes is estimated as equivalent to 1,881,000,000 bushels, making it the smallest crop since 1881 and the quantity of corn actually harvested as grain is estimated at 1,107,887,000 bushels which was probably below the quantity husked in any season in 60 years. However, such an unprecedented area of corn failed to produce grain that the acreage cut for fodder is believed to have been more than twice as great as in any previous year. The estimate of the oat crop has been revised downward about 3 percent and is now placed at 529,000,000 bushels, indicating the smallest oat crop since 1881, and the estimate includes a considerable quantity of grain so poor that it is bein fed without threshing. The estimate of barley production now stands at 119,000,000 bushels which is far below production in any other season since 1900. The estimate of wheat, practically unchanged at 496,000,000 bushels, is only 6 percent below last year's short crop, but it is almost 20 percent below production in any other year since 1904, and it is the smallest total since 1890. The various grain sorghums, which have been life savers for many farmers in previous years of drought, have this season produced only about half as much as in the driest of recent years. The hay crop was a fourth smaller than any hay crop cut in the last dosen years or more and theyield of sweet sorghum forage also was low. In part of the drought area, the very large tonnage of Russian thistles, weeds, and corn fodder salvaged will partially offset the acute shortage of hay, but in some areas there is an acute scarcity of all roughage. The hap problem is further complicated by an acute shortage of grass and clover seed. The crop of timothy seed was particluarly short, production being estimated at 262,000 bushels compared with 835,000 bushels in 1933, and 1,406,000 bushels in 1932.

Beginning on page 510 of this publication, are the monthly prices for various grains since 1908. The statistics are too lengthy to reproduce in detail, but we will take just the first column on corn, where the prices are shown from 1908 to 1934, the first column being for October 15th of each year. From 1908 to 1916, the farm prices of corn fluctuated between 67.9c and 83.6c a bushel. During the war corn got up as high as 160.6c a bushel. In 1921 it was 46c a bushel. In 1930 it had gotten back to 81.9c a bushel, but in 1931 it was 33.4c

a bushel. In 1932, 21.6c a bushel, and in 1933, 38.8c a bushel. In 1934 it is given as 76.7c a bushel, but by referring to page 497, it will be seen that the crop of corn for that year was only 1,381,000,000 bushels, or a crop less than 50 percent of normal.

On page 462 of the publication is given the crop production for the United States. It will be seen that since 1919, with the exception of the one year of 1930, the corn crop has been pretty consistently around twenty-two hundred million bushels, and yet the farmer is expected to be able to pay his debts 100 cents on the dollar.

We have said that the farmer works hard. Perhaps that sounds like a truism. It is a matter of common knowledge, but what isn't a matter of common knowledge, is the low return that the farmer usually obtains for his labor.

In Circular No. 309 the Farm Real Estate Situation 1932-1933, the Department of Agriculture says, p. 40:

"As the year 1932 progressed, the problems of indebted farmers and their creditors increased. Shrinking incomes meant increased delinquencies, and these in turn resulted i more foreclosure proceedings. In many instances it has been reported that creditors have felt that under the circumstances the rights of both parties would be more nearly protected if foreclosures were not pushed, but debtors given a chance to work out. The fact that the indebted farmers themselves normally would be able to operate the farms as efficiently as the average tenant who might be secured, together with the further fact that in numerous cases if the property were forced on the market it could not be disposed of for the face of the mortgage, has probably led to this conclusion."

On page 47 of the bulletin, it is stated:

"In Iowa an investigation reported that corporate holdings of land in 54 counties studied amounted, in the first quarter of 1933, to 1,382,920 acres, or 7.2 percent of all land in farms in these counties. Over 95 percent of this total was held by financial institutions, and the remainder was held by colleges and miscellaneous corporations.

In general, the concentration of corporate-owned land was greater in counties with low value per acre than in counties with higher-valued land.

Of the total corporate-owned land, insurance companies held

47.8 percent, deposit banks (including closed banks) held 22.5 percent, land-investment companies held 11.7 percent, the joint-stock land banks 8.2 percent, mortgage companies 2.4 percent, and the Federal land banks held 2.8 percent."

On page 62 it stated:

"Despite these efforts, it has not been possible to reduce debts as rapidly as farm values have declined, and the lag in debt adjustment incident to the shrinkage of more than one third in farm values during the 3 years 1930-33 has increased the number and proportion of mortgaged farms having high ratios of debt in relation to the new values. A widespread tendency among creditors toward postponement of payments and of leniency toward borrowers has not prevented an increased number of cases of forced liquidation following the rise in delinquency and the disappearance of equities, as evidenced by foreclosure, forced sale of property, or voluntary surrender of title."

It is further said, p. 62:

"In the field of short-term farm credit, the year was featured by banking difficulties and the use of emergency credit in larger proportions than in any previous year. The closing of many rural banks during the concluding period of 1932 and the early months of 1933 was followedby the bank holiday of March, which left more than 3,000 banks, mostly in the rural districts, closed or operating under restrictions. These difficulties stimulated the creation and expanded activity of Government-sponsored credit agencies. Outstanding advances of the regional agricultural credit corporations, intermediate credit banks, and crop-production loan offices amounted to $375,000,000 in August 1933.

On page 63 it said:

"The year witnessed the enactment of a number of measures aimed at relieving debt distress and improving credit facilities. Acts of various State legislatures directed toward securing a stay of foreclosures for farmers temporarily unable to meet their obligations have restricted the number of formal court actions instituted to take possession of property. In several States voluntary local committees were formed to assist distressed borrowers in reaching such agreement with creditors as seemed calculated to assure mutual protection and fair treatment of all interests. An amendment to the National Bankruptcy Act approved March 3, provided for the appointment of debt conciliation commissioners by the Federal district courts, upon petition of 15 farmers from a given county. After prescribed hearings the court may approve any composition or extension of agricultural indebtedness agreed to by creditors representing a mapority in number and amount. Legal proceedings against property may not be taken while cases are under consideration or during the life of the agreement. Secured creditors including lenders on real estate are not disturbed in their claims save with respect to the time and method of collection. The new law has been used extensively in adjusting debt difficulties in some areas, its facilities having been used by several hundred Utah farmers, for example.

The Federal Government enacted comprehensive measures relating to both long- and short-term credit. The Emergency Farm Mortgage Act in addition to reducing interest rates temporarily on

loans by the Federal land banks waived all payments on principal for the 5 years following July 11, 1933, and authorized direct loans to farmers where national farm-loan associations do not provide accommodation. Authorization was given for the issuance of $2,000,000,000 of 4-percent bonds guaranteed as to interest by the Federal Government, such bonds to be offered in exchange for mortgages or sold to obtain proceeds for making new loans. Provision for second-mortgage loans not exceeding $5,000 each and bearing 5 percent interest was authorized from a fund of $200,000,000 made available by the Reconstruction Finance Corporation for cases of debt settlement in which the total obligations of the borrower do not exceed 75 percent of the value of the farm property.

The Farm Credit Act of 1933 authorized the creation of regional credit corporations to be established in each of the 12 Federal land bank districts to assist in organizing and financing of local production-credit associations. Twelve banks for cooperatives are to be similarly established for the purpose of financing farmer's cooperative associations in the respective districts, while a central bank for cooperatives is to function in Washington for cooperatives operating on a national scale."

The Bureau of Agricultural Economics has issued a bulletin entitled, "Income from Farm Production in the United States 1933." On page 3 is a table in which is given the "Return to capital and management as percentage of operators' net capital." Up to 1929 the farmer received a return of a trifle over 3 percent. In 1930 he lost .7 percent. In 1931 his return was —2.8 percent. In 1932, it was —4.2 percent, and in 1933, he got a return of 1.9 percent. What other business on earth could exist under such conditions?

A press release of the Farm Credit Administration for publication November 15, 1934, Press Service No. 6-61, is entitled "Farms Sell at Higher Prices." In this bulletin it is said:

"The average sale price per acre of land sold by the banks from January 1 to September 30 this year shows an increase of 20 per cent compared with prices received during the same period in 1933. Land acquired by the banks over a period of years sold for an average price of $20.01 per acre during the nine months of this year compared to $16.65 in the corresponding period last year. An increase in the average sale price was reported from every land bank district in the country."

Hence, it would certainly appear as if the estimate of 10,000,000 acres taken over in the grain area was very low. We have figured this on the basis of $60.00

an acre. It is true that the figures used are for total value of all farms taken over, and in some instances include other real estate. Yet the companies taken represent only one-third of the total assets of all insurance companies.

And the division used, $60.00 an acre, is three times as high as the average value of farms sold by the Federal Land Banks.

Hence, we believe our estimate, or "guess" if you will, that the large mortgage holders must have acquired at least 10,000,000 acres of farm lands in the grain belt, is very conservative.

On the other hand, it is for the companies which are commonly known to have made their principal commitments in the grain belt. As we have stated, the real truth can only be developed by a Congressional investigation, but we can not help but believe that our estimates are low rather than high.

THE FARMER'S INCOME

We do not intend to annoy the Court with an endless array of statistics as to the part the farmer plays in the nation, even under these highly mechanized times and this age of technocracy.

Neither is it necessary to weary the Court by again reminding it that this nation was founded by farmers, defended by farmers, and preserved by farmers. There is not a state in the Union that could exist for 30 days if the farming population was eliminated.

There is not a state in the Union of which the major portion of its area is not devoted to agricultural pursuits.

In 1870 those employed in agriculture constituted 53 percent of the total working population, and farmers

received about 26.5 percent of the national income. In 1900, 36 percent were gainfully occupied in agriculture, and its share of the national income was about 21 percent.

In 1900 out of an entire population of 90,000,000, there was a farm population of 32,000,000. In 1932 the entire population had increased to 125,000,000, and the farm population had decreased to 31,000,000. Yet perhaps the relative importance of the farm population increased, as the necessity for feeding the teeming millions grew.

Foregoing facts from "*The Agricultural Situation*," Volume 19, No. 2, February 1, 1935, Department of Agriculture, page 7.

The national income, if defined like realized income, from the production of goods and services, amounted to $26,400,000,000 in 1900, $79,700,000,000 in 1929, and $51,900,000,000.00 in 1934. The amount attributed to agriculture is about $5,000,000,000.00 in 1900, $8,300,000,000.00 in 1929, $5,300,000,000.00 in 1934. However, it is estimated that about $2,500,000,000.00 should be added to the foregoing figures, as representing the farmers' income from other sources, in order to arrive at his total gross income.

Bulletin, *supra*, page 6, 8.

In the two bulletins issued by the Department of Agriculture and printed in the appendix, is found a comprehensive and careful survey of the farm situation. But really table 2 from the bulletin of the Bureau of Agricultural Economics for February 1, 1935, tells the entire story.

Table 2.—AGRICULTURE'S SHARE OF NATIONAL INCOME 1909-34

Year	National income (Million Dollars)	Contributed by agriculture (Million Dollars)	Contributed by agriculture Per cent	Year	National income (Million Dollars)	Contributed by agriculture (Million Dollars)	Contributed by agriculture Per cent
1909	26,430	4,988	18.9	1922	57,926	7,300	12.6
1910	28,024	5,218	18.6	1923	65,949	8,026	12.2
1911	28,376	4,815	17.0	1924	68,461	8,325	12.2
1912	30,358	5,294	17.4	1925	73,067	9,089	12.4
1913	31,909	5,133	16.1	1926	74,954	8,214	10.9
1914	31,669	5,081	16.0	1927	76,007	8,371	11.0
1915	33,083	5,488	16.6	1928	77,291	8,109	10.5
1916	38,884	6,631	17.1	1929	79,702	8,254	10.4
1917	46,575	9,188	19.7	1930	72,890	6,320	8.7
1918	54,784	11,205	20.5	1931	60,790	4,659	7.7
1919	59,550	12,182	20.5	1932	47,900	3,582	7.5
1920	65,928	11,057	16.8	1933	46,030	4,557	9.9
1921	55,430	6,967	12.6	1934	51,920	5,287	10.2

In circular No. 309 of the Department of Agriculture for December, 1933, and also bound in the appendix, is a survey of the farm real estate situation. And as with the preceding table, the entire story is told in the table on page 11, which gives land values in Iowa, and shows their steady decline. We reproduce merely the first column, which gives the average value per acre of cash rental land. (Bulletin, page 11):

Year	Average value per acre of cash rental land
	Dollars
1921	236
1922	188
1923	170
1924	164
1925	154
1926	157
1927	149
1928	142
1929	140
1930	130
1931	114
1932	93
1933	70

The shrinkage in capital assets of the farmer meaning thereby their virtual elimination, necessarily must carry with it a debasement of morale. If a farmer owned 200 acres of land in 1921, which was mortgaged at $70.00 an acre, less than one-third its value, and hence a conservative loan, he would have an equity in his land of $33,200.00, with the security and the credit that such an accumulation would justly entitle him to. In 1933, he would be a pauper.

But this table does not begin to tell the story. There are any quantity of farms in Iowa that are selling for less than $70.00 per acre. Only a few months ago a friend of one of the counsel, purchased a farm of 600 acres in Boone County, Iowa, held by an estate, which for some reason was not eligible for a Federal loan, for cash, for $35.00 an acre. (Name will be furnished if desired). About a month ago the Heath farm, 11 miles Northwest of Lafayette, Indiana, and which has been described as the "best farm within 100 miles of Lafayette," was sold for $55.00 an acre.

The attached clipping from the Advertising Section of the Chicago Tribune, from March 17, 1935, is self explanatory:

Iowa

1,133 A. 3 SETS IMPROVEMENTS; FINE stock and grain farm; $20 per acre.

1,025 A. Iowa stock and grain farm, well located. 2 sets improvements. Price $35 per acre. Can accept part trade and part cash. R. Sondgrass, 319 Iowa Bldg., Des Moines, Ia.

IOWA—WELL IMPROVED STOCK FARMS. black land grain farms. Nebr. ranches. $3,000 to $8,000 cash, bal. 10 years. Lincoln Joint Stock Land Bank, Lincoln, Neb.

950 AC. BLACK CORN FARM—GD. BLDGS.

Worth $100 ac. Will offer short time at $35 ac.; cash. Address S. H. 95, Tribune.

Furthermore, these values mentioned in the bulletin, are in a sense, inflated, for another reason. The Federal Land Banks are loaning billions of dollars to refinance farms. The law makes them use the 1909-1914 standard of prices as a standard. Thus Benton County, Indiana, the eastern end of the corn belt, which sweeps eastwardly through Iowa and Illinois and ends about 15 miles Southeast of Benton County, is being loaned about $70.00 an acre on its farm land.

Now it is perfectly obvious that if a farmer has a farm for sale on which there is a mortgage of $70.00 an acre at 4½ percent interest, and he desires to sell it, and somebody wants to buy it, that such purchaser will pay him something for his perhaps mythical equity. And take a chance on being able to meet the interest. So, if he pays $15.00 an acre for the equity, which means only $3,000 to obtain possession of a 200 acre farm, the value of that farm is automatically raised to $85.00 an acre. But offer farm land for sale without such loans, and the result has been detailed.

Thus, the farmer has suffered a practical extermination of his capital assets, and a shrinkage of his income of about 50 percent, during the past 13 years.

What other industry, what other group, could have taken a beating such as this, and have been permitted to remain so long without relief?

Certainly not the highly organized mortgage holders, whose minions are ever vigilant, night and day, to protect their interests.

THE PROBLEM OF ESCAPE FROM THE DEPRESSION

In a talk by Reuben D. Cahn, delivered at the second annual conference on Current Problems, sponsored by the Chicago Tribune, Palmer house, Chicago and recently reprinted in the Chicago Tribune, the speaker said:

"The problem which I am to

discuss is, unfortunately, not academic. The depression is not something which happened a little while ago. It is still with us. Times right now are as hard as they have been in your lifetime. Do you desire some evidence of it?

1. Twenty-one million are on relief in this country. That is five times as many people as lived in the thirteen American colonies when they successfully revolted against King George. It is as many people as lived in the entire country in 1845. It is only slightly less than the population which stood by the Union in the Civil War. It is equal to the combined populations of Canada, Australia, and Ireland. It is more people than ever before were on relief in this or any other country.

2. In Illinois alone 325,000 families, or 1,200,000 persons are on the dole. That number is also record breaking. The aggregation of people supported by relief in Illinois is equal to the combined populations of four states—Vermont, Delaware, Wyoming, and New Mexico.

3. In good times the incomes of all the people of the United States, if spread evenly, would amount to $750 for each man, woman and child. In 1934 a similarly equal division of everybody's income in this country would give each one of us only $330.

4. Such of you as own real estate or mortgages or mortgage bonds or bank stocks would be willing to rise now and give testimony of the persistence of hard times. From this brief statement of our present adversities I think I will be convinced that the fellow who recently put up the sign 'Wasn't the Depression Terrible?' was a grim humorist. Yes, it was terrible! It still is! The escape from this depression is something which is yet to be accomplished."

IX

THE LEGAL ASPECT OF DEBTOR AND CREDITOR.

A.

HISTORICAL REVIEW OF BANKRUPTCY LEGISLATION.

The following discussion is rather hastily made, because of the shortness of time allowed, in order to permit this case to be considered by the court during the present session of Congress. For the historical review that is used, counsel can claim no credit. This must go in the fullest measure to the author of that remarkable treatise entitled "*A History of the Bankruptcy Clause of the Constitution of the United States of America*," by F. Regis Noel. It is "A Dissertation" published about 1916, submitted to the Faculty of Philosophy of the Catholic University of America in partial fulfillment of its requirements for the degree of Doctor of Philosophy. This scholarly historical review of Clause 4, Section 8, Article 1 of the Constitution, *replete with citations and references*, is unmatched in its field. It should be printed as a public document.

It was intended to file copies for use of the court, and it is with regret that we have just been informed that only a few are extant. We are endeavoring to obtain at least one for filing. Hence, the extracts from the "Dissertation" are more copious than would usually be the case.

The reflections of counsel, herein, are drawn from the experience and observations of one, who for a quarter of a century, has lived among, and been the friend and the confidant, of farmers, in one of the great agricultural communities of the country.

In the appendix are attached, in addition to other documents, two Government reports, which portray the condition of agriculture.

It will be seen, especially by referring to the phamphlet entitled "The Agricultural Situation," February 1, 1935, Volume 19, No. 2, of the Bureau of Agricultural Economics, table 2 on page 5, *that the depression in agriculture began in* 1921, *when agriculture's share of the national income decreased to* 12.6 *percent from* 20.5 *percent in* 1919, *and* 18.9 *percent in* 1909.

It has never exceeded the 1921 percentage in any year since then. In 1929 it was only 10.4 percent of the national income. And decreased from then to 7.5 percent in 1932. Even in 1934 it was only 10.4 percent.

Yet, in spite of these almost unbelievable figures, the number of farmer bankruptcies consistently declined up to 1932. See "*The Farm Real Estate Situation*, 1932-1933" in the appendix, pages 58, 59.

An endeavor is being made to obtain comparable figures for 1933-1934. We are informed this material is now in the Government Printing office and will not be released for about a month. Of course, these bankruptcies materially increased in 1933 and 1934.

The farmer is not only, as has been so often stated, to be the backbone of this country, but he is in truth, its heart.

This is a nation of farmers. Founded by farmers. Defended by farmers. And preserved by farmers.

Alexander Hamilton stated that:

> "*The three great objects of government, agriculture, commerce, and revenue, can only be secured by a general government.*"
>
> "*Secret Proceedings of the Federal Convention,*" p. 96.

Thus, one of the greatest of all Americans, placed agriculture first.

Yet the amazing thing is that the farmer has usually been the last one to be considered.

The Government publications attached to the appendix, show that farmers labored through the throes of a severe agricultural depression for thirteen years, before Congress passed a law affording to a class which should have been its *first concern* a similar opportunity to commence to reorganize itself. Because the Frazier-Lemke Act merely gives to the farmer an opportunity, somewhat similar to those afforded by sections 77, 77B, and 80, but with much more stringent provisions, such as payment of the full appraised value, and the menace of reappraisal, to reorganize himself, as the cited Amendments afford to commerce and municipalities.

But commerce was only in the doldrums for less than three years, when, with a fanfare of publicity that a great step forward was being taken to help combat the depression, such debt adjustment and reorganization provisions as section 77B, were passed.

And it was only proper that such legislation should become effective. For 2,500 years man has recognized that debt is a sad, and unavoidable attribute of economic life. And at the bottom of economic cycles, (usually following wars), the situation becomes acute.

And recovery cannot occur until debt adjustment is accomplished.

Noel in his introduction to his treatise, aptly says, p. 7:

"Charity, the capital characteristic of the legislation on bankruptcies, has been likened to a cloak which covers a multitude of sins. Debt's sad presence has been felt in all ages. The condition of debt is in so many cases attributable to an indissoluble chain of events from which the debtor can not by his own efforts escape. Recognizing this, the framers of the Constitution not only granted the power, but, according to some interpreters, ordered that a cloak be made to protect the debtor from the bitter winds of misfortune and the cruel assaults of his creditor. Therefore, by virtue of delegated authority, they decreed that such

protection should be provided and designated the tailor, the Congress of the United States, to whom they gave a monopoly. The cloak is to fit every insolvent debtor living under the American government, that is, to be of uniform application; but neither pattern nor material was specified."

In addressing the people of the State of New York in The "Packet" of January 22, 1788, James Madison, Noel, p. 5: "dismissed the discussion of the bankrupcy clause of the Constitution of the United States with the remark that, 'The power of establishing uniform laws of bankruptcy, is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie, or be removed into different States, that the expediency of it seems not likely to be drawn into question.'"

"The Federalist; a Commentary of the Constitution of the United States", edited by John C. Hamilton, Phila., 1865, Art. XLII, p. 336.

1.

BANKRUPTCY LEGISLATION IN FOREIGN COUNTRIES PRIOR TO THE CONSTITUTIONAL CONVENTION OF 1787.

Noel gives a detailed historical review of bankruptcy legislation concerning debtor and creditor in countries other than that of the United States. He says, p. 13:

> "During twenty-five centuries the lawgivers of the world have periodically legislated on this human relation. In primitive communities a formulated practice was unknown, but it is reasonable to suppose that satisfaction for a hopeless debt was secured by labor or some personally inflicted punishment. In harmony with the spirit of those ages we can be certain that it was cruel. In semi-civilized parts of the earth harsh treatment of debtors persists. It is well established that in Pegu and the adjacent countries of East India a creditor is given full sanction in disposing of a debtor, his wife and children. Extreme cases are recorded in which a debt was satisfied by the creditor violating with impunity the chastity of the debtor's wife. Indeed, it can scarcely be believed that only a half century has passed since America and England surpassed many other nations in cruelty in respect to their treatment of debtors."

Perhaps it is because, as will be developed subsequently, that laws on bankruptcy in the United States were extremely harsh up to 65 years ago, that sufficient time has not elapsed to eradicate from the minds of our modern creditors, archaic ideas such as the immediate distribution of property, or the punishment of debtors such as had existed for many centuries. Yet, even in days far removed in the dim vistas of the past, we find perception of the rights of the human brotherhood. In this historical review it is pointed out that (Noel, p. 15) the Athenian Draco is believed to have been responsible for the institution of the modern system of treating debt. It is recorded that, in his criminal code of B. C. 623, he was unusually harsh in his treatment of debtors. The purpose was to stimulate industry. He classified debt with murder and laziness as a capital crime. Thieves of pot-herbs and fruits and debtors were punished as severely as sacrilegious robbers and murderers. Draco considered the lesser offenses deserving of death, so there was nothing more severe for the most serious crimes. This rigor was somewhat abated when, instead of death as a penalty for debt, the unfortunates were compelled to cultivate and remain on the land the same as cattle and fixtures and to surrender their children to be exported as slaves.

> *Plutarch*, "*Lives*," s. v. "*Solon*," Clough's edition p. 128.

But it is interesting to note that it was less than 30 years later that Solon, in reviewing the tyrannical tables of Draco, *considered debt a misfortune*, rather than a crime, and mitigated the punishment of debtors. The court must excuse counsel if he pauses a moment here to philosophize.

Within the past few months The Equitable Life Assurance Society has filed a very large number of foreclosures in Benton County and surrounding counties. In a number of instances loans have been offered by the Federal Land Bank which would entail a very small loss on the insurance company. Consistently it takes the position it must receive its pound of flesh to the last ounce. In a hearing before Referee Burnett in the matter of Clem V. Hibbs,* we challenged the attorney for the Equitable to show one instance that he could point to where this company has effected one composition with a farmer. After considerable cogitation he mentioned one case in Illinois, and in that case the lienholder got payment in full through a manipulation of the various properties and the elimination of certain junior mortgages.

Returning to the great Athenian Solon, Noel continues his review by saying, p. 15:

> "By his decrees, Seisnethea, (Relief from Burdens) he abolished servitude for debt and forbade anyone to lend or borrow money on the security of the person of the debtor. He ordained that what debts remained should be forgiven, and for the future, no man should engage the body of his debtor for security; but the bankrupt and his heirs forfeited Greek citizenship, a penalty more deeply felt than the loss of life or liberty. For these wise laws, enacted about 594 B. C., the ages have accorded him the title, 'Benefactor of Men.'

Conditions at the present, while unusually severe, are not in effect, different from the throes which the world has often experienced in the past. For centuries there has always arisen the problem in times of economic stress, of how to pay the exacting creditors, when

*Cause No. 2224. (Hammond Div. 2, D. Ind.)

in truth, there was nothing to pay them with, and when also, as Judge Simons so accurately points out in his decision in the Court of Appeals, that the loss is taken. The loss to the creditor has been brought about by the economic cleaver. Thus, in the year 594 B. C., the great Athenian, Solon, coming into power during a period of severe debt and misery in Athens, owing to the severity of the Draconian laws, lessened the rate of interest on debts and increased the value of the pound from 73 to 100 drachmas.

Solon, Clough's Edition, p. 128.

It is interesting here to observe that the increase in the value of the pound from 73 to 100 drachmas, is rather parralel to the decrease in our gold dollar.

And this was nothing new. In fact, Didorus claims this principle was copied from the Egyptians.

History is replete with instances of the severity with which debtors are treated when the wealth of the country is combined and concentrated in the hands of a privileged few. And ultimately the people become weary of such an unjust situation, and change their form of government, generally attended with great disorder and frequently horrible retalintion for the wrongs that they endured. Wealth has usually been heartless. Creditors mighty. The French Revolution is a striking illustration not far removed from the present. The Maderan Revolution was brought about, it is said, because at that time 200 families owned 90 percent of the land in Mexico. Oddly enough, Francisco Madero was one of the great land owners, but like our own immortal George Washington, he was a patriot first and a creditor second. The figure 200 is cabalistic. We find it frequently used in the annals of the French

Revolution. It is also said that 200 families owned over 80 percent of the entire wealth of all the Russias. Where are they today? And as we will point out a little later in this discussion, our own country in its babyhood was on the verge of being wrecked by greedy creditors. A threat not removed until the wise fathers established and passed the bankruptcy law of 1800, thereby avoiding the various inharmonious remedies and excessive treatments that the states had been visiting upon their debtors. This was because a certain percentage of creditors are not only greedy, but unscrupulous. Wealth is power. It takes a well balanced human to use power wisely, whether the power be one of wealth or one of words. We have pointed out in our economic review how these greedy creditors foment unrest, not only by the human suffering to which they subject an honest debtor until he strips himself, but by the manner in which they attempt to ham string every human right he has by traducing his natural advocates, and frequently his public representatives.

At the time of Draco, Athens was in the hands of the rich. Plutarch in his "lives" S. v. Solon, Clough's edition, p. 128, says, p. 15, note, Noel:

> "All the people were indebted to the rich; and either they tilled their land for their creditors, paying them a sixth part of the increase, and were, therefore, called Hectimorii and Thetes, or else they engaged their body for the debt, and might be seized, and either sent into slavery at home, or sold to strangers. Some (for no law forbade it) were forced to sell their children, or fly their country to avoid the cruelty of their creditors; * * *"

It also, will be recalled that Rome was essentially a nation of creditors. A small but wealthy class. So

when the Romans came to deal with the relation of debtor and creditor, they went to Greece for their legislation, as they did in many other cases. And, hence, in 450 B. C., promulgated the "Laws of the Twelve Tables," which are alleged to have been "more Draconic than Draco," and described as having been "written in blood," especially (Noel p. 46) the terrible section *de debitore in partes secando*. This section empowered the creditors, as a final resort, to cut the debtor's body into proportionate shares. But it was found that even mighty Rome could not enforce laws such as this. And, hence, as Noel points out, they were probably never enforced. Eventually the Romans evolved something rather similar to our modern bankruptcy law, with the adoption about 325 B. C., of the lex Poetalia. This law prohibited contracts of usuary, and provided that a debtor, by swearing that his assets exceeded his liabilities and surrendering all his property, could escape all the hardships of the laws of the Twelve Tables, and maintain his freedom.

Noel says, p. 17:

"Caesar is credited with having promulgated the law *Cessio Bonorum*, a leading principle of modern bankruptcy laws. In his work on the *Civil War*, he relates that when dictator he permitted debtors to yield their lands in payment to their creditors at the valuation at which they were assessed before the war. *Cessio Bonorum* originally allowed the retention of the rights of a Roman citizen for the reason that the distress arose from a civil strife. Under it all citizens were exempt from imprisonment, but it did not discharge the debt or exempt future acquisitions."

At this period in the history of Rome the doctrine of discharge originated and it was gradually extended.

The motive which inspired the introduction of this legal principle was not commercialism, but a purpose to destroy one of the effects on private affairs of participation in a military campaign, an incident of nearly every war.

Noel says, p. 18:

> "As is usually the case with emergency measures, it was inadequate, was misapplied, and not affording permanent relief, we find that its provisions were not long observed. There followed great oppression of debtors, an abuse which caused numerous withdrawals to the Sacred Mount, and on account of the vast number of the debtor class, occasioned great alarm to the Republic."

Thus we find definitely recorded 3 centuries before the birth of the Saviour, instances that creditors oppressed their debtors. The question here is, have we progressed from that status, or are we sinking back into it?

A study of the historical review by Noel, which is far more complete than that contained in any treatise anywhere concerning the relation of debtor and creditor in bankruptcy, and a study of present conditions, irresistibly leads the thoughtful student to the following conclusions:

1. That the Gods of Greed are ever rampant in the soul of the creditor class.

2. That for centuries they have held in their iron grasp the making of the laws which govern their relationship. That it has taken centuries to pry one finger loose.

3. That the first step forward was made when the body of the debtor was released from bondage to the creditor, and as a natural concomitant, his family also physically released. That the next step forward oc-

curred when he was permitted to surrender his property to his creditors. The next step forward was when, as a reward for that surrender, he was discharged of his obligations. This feature was first recognized in the Roman law, "the first purely charitable treatment of debtors," the discharge. This was the code "Corpus Jurus Civilis," which provided that if a debtor yielded up all his property to his creditors, he should not be continued in prison. And there was also a provision that by swearing that he was unable to poy his debts, the debtor was then relieved from the payment of them.

"*The Institutes of Justinian*," Abdy & Walker, Cambridge, 1876, Noel, p. 19.

So that as a matter of fact, the world really has not progressed much, in treating the relationship of debtor and creditor, for many centuries. Not until the year 1933, because it is in that year that Congress, which has blazed the way for so many magnificent contributions to humanity, first established the principle that there was a time, and the time had now come, that the debtor could retain and redeem his property, through its usufruct, and thereby build himself back into a useful member of society. Build himself back into a useful citizen of this great Republic.

Too much emphasis can not be laid upon the historical review of the Roman legislation, because as Noel points out, that before the Roman legislation was established, in the commercial republics of Italy (Venice), the principles of that legislation had been carried to England, but the harsher features of the Roman law never became the law of England. This is perhaps due to the fact that during the Roman Occupation, and also during the Norman Conquest, there was little

commerce in England. Hence, during the Norman period, few enactments are recorded concerning the relation of debtor and creditor. In fact, few civil actions of any kind were brought during this period, although Noel points out that Glanvil records an action of debt and one of replevin, and, upon contest, trial by battle. And that the policy of England was to be an enlightened one, is shown by the fact that (Noel, p. 21) the Magna Charta, extorted from King John by the barons at Runnimede in June, 1215, provides that it is illicit to seize the lands and revenues of a debtor when his movable or personal goods are sufficient to pay his debts and he is willing to surrender them to his creditors.

Stubbs, "Select Charters and Other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward I," p. 298.

For many years English jurisprudence would not permit violation of personal liberty for debt; real property alone could be taken in satisfaction.

Benton, "Thirty Years in the United States Senate," I, 292.

At critical periods occur Explosions.

Human life appears to run on a chartered course. And yet at certain long periods, explosions occur. They are necessary, to change the direction of the rudder, because the mental and spiritual force of the peoples of the world needs a tremendous impact for even a temporary dent to be made upon its consciousness. Hence, the saying that there is only one genius born every hundred years in every line of endeavor. And in government, it appears that such an explosion only takes place after cen-

turies of evolution. Such was the Magna Charta. That was an explosion that rocked the souls of freemen, and the reverberation of that explosion will echo in their hearts and resound in their ears as long as mankind endures on earth. It was a symbol that freemen could triumph over privilege. When the Magna Charta was signed on the heath of Runnimede, the American Republic and every Republic that succeeded since then, had its moment of conception. The echoes of that explosion can be traced through the history of every nation of continental Europe. The next explosion was five and one half centuries later, with the Declaration of Independence. Life, liberty, and the pursuit of happiness are the purposes expressed in the document which founded this Republic, and the purposes which the Constitution of this nation was intended to safeguard. It was declared that there was conceived in the soul of man at the moment of conception, certain inalienable rights that no despot, physical, mental, or spiritual, had a right to impair or extinguish, and those inalienable rights were declared to be life, liberty, and the pursuit of happiness.

The empire of Britain also was to demonstrate to the world how a mighty empire would arise when the forgotten men could handcuff the Gods of Greed, and so restrain them as to permit a moiety of opportunity to those in the lowly places. And, hence, a mighty empire grew, on which today the sun never sets. Whose birds of commerce ceaselessly wing their way over the Seven Seas. Whose goods are consumed by the daughters of culture of the French Republic, and sought by the pigmies in darkest Africa. A mighty nation indeed. Solidified by a system of justice before which the king and the commoner stand with equal rights at the bar of the

court. An even handed justice which makes it worth while to bring suit in an English court to collect a debt of only $20.00. A sense of justice which makes it an honor for the rich and the powerful to act as magistrates, called here justices of the peace, and a sense of justice which makes those men oblivious to friendship and to every thing but the law of the land when they sit in the chair of justice. Only recently we read of one of these magistrates sitting in judgment on a neighbor who had been brought before him for poaching. A wealthy gentleman, member of an old and esteemed family, who could not resist the temptation of birds flying over his fence from a neighbor's land, and indulged in a pot shot. When brought before his life long friend, this magistrate said he had no harder task in all his life, but that the law of the land was specific, and his oath of office binding his conscience, he felt constrained to give the maximum punishment.

Such is England on whose possessions the sun never sets. Mistress of the Seven Seas, Whose sense of obligation to her citizens is so intense. Whose sense of justice is so keen. Whose loyalty to her citizens have been manifested so often, that the humblest British citizen can traverse the highways and the byways of the savage parts of the world, secure in the knowledge that wherever he goes, and whatever he does, so long as it is lawful, so long as he abides by the laws of the country where he is, the Union Jack enfolds him in an invisible mantle of protection. A nation that has endured and grown stronger and ever stronger for a thousand years. Again we say, *a land of unlimited justice but limited opportunity.* That is what has grown there from the explosion of the Magna Charta.

The second explosion; the Declaration of Independ-

ence, occurred in a land removed by 3,000 miles of ocean from its mother country. Yet that erstwhile province, with its Constitution, has managed in the short space of a century and a half, to build a mighty nation and a far more complicated civilization than history affords any record of. A country, comprising within its borders what was originally some 90 different nationalities, who inhabit 48 different states, each with its own laws, each with its own viewpoint, each functioning under its own law, and particular economic conditions, yet knit together, indissolubly, with one common purpose, with a common aim, functioning each to each in the closest possible human union, although separated by 3,000 miles of plains and mountains, bordering on the two greatest oceans of the world, and lying between almost the arctic on the North and the tropics on the South. Administering mandates, possessions, or geographic interests, in probably every meridian of the world. Comprising less than 8 percent of the population of the world, it owns 40 percent of the wealth. 80 percent of all the telephones of the world are in the United States. 90 percent of all the automobiles, including the Fords. Imperfect as is this government, it is still the most democratic, the most representative, the closest to the man and the state, than has yet been devised by the mind of man. It was created by the fathers of a country, of whose area over 80 percent was inhabited by Indians. To 90 percent of its area only a few untamed hearts had yet penetrated. Almost three quarters of a century after its adoption it still took 9 months to travel from its East coast to its West coast, where today the journey can be made in 11 hours. Yet that Constitution, that again we say, rightfully looms so large in the minds of the opposition, created by the

representatives of thirteen farming states, whose population were either voluntary or involuntary exiles, whose country consisted in truth of the untamed wilderness and the unharnessed waterfall, has served as a model of government, for nations with centuries of legal learning, centuries of artistic progress, centuries of political and social science, in back of them. That document has served as a model for every other free nation, which since then has sprung forth from the womb of the world, in every quarter of the globe. So we may well be proud of it. We may not be accused of being overly enthusiastic when we use that rather trite phrase, "immortal document," in referring to it. That constitution was the written climax of a struggle that freemen had engaged in for centuries. Ever since there has been such a thing as history, it has always recorded a struggle against the greed of the privileged. Some peculiar psychology appears to infest the minds of those who obtain power through the exercise of privilege, and the consequent garnering that seems a concomitant. Well did that great court in Mississippi, in *Henry v. State*, 39 So. 856, 893, 88 Miss. 343, say:

> A "constitution" is the magna charta of the people's rights, the fundamental law of the land, intended not for short periods of time, but for all time.

So having been in existence a period of time eight and one-half centuries less than the mother country, this nation has two and one-half times the population; three times the wealth, and more than three times the commerce. This nation, founded by a despised handful of *farmers*, has twice overcome the mother country in mortal combat. And significantly enough, on each occasion, decisively against almost overpowering odds,

triumphed over that pride and boast, that insurance of the mother country, the British navy. And finally, may it be said with all due modesty, that in her hour of need this Republic, founded by farmers, conceived by farmers, saved the mother country, 3,000 miles away, from destruction, not merely from conquest, but from absolute destruction, and yes, we can go one step further. We can truthfully say in the light of the evaluation of the past decades and the present, that we saved the world from a very hideous threat. Farmers founded this Republic in 1776. Farmers saved this Republic in 1812. Farmers preserved this Republic in 1861. And it is not too much to say, Farmers saved the world in 1917.

To what can be attributed the phenomenon that a handful of farmers could have founded a nation such as this, at whom the whole world stares goggle eyed with amazement. A nation that today is blazing the way for relief from this worldwide catastrophe, into which the unseen but terrific forces of nature have plunged us. This nation has been builded on one rock and that is *equal opportunity and liberty*. We have far outstripped the old world. Because, while justice existed there, the citizens had *only limited opportunity*. That is why, as this court has pointed out, and Judge Simons in his great opinion sapiently pointed out, has been the policy of this country in the distribution of the public domain, in the homestead laws, in the land grants, and in every way in the development of this country. In the mining laws. Go where you will. The commercial pulse of America has beaten to the heart throb of equal opportunity. As is pointed out, this nation was originally, and still is, a nation of farmers. Primarily, we are an agricultural nation.

There could not have been commerce if there had not

been the products of the land in back of the commerce. It had to be the products of the land which were to move in the ships, which were the origin of our commerce. It had to be the products of the land that moved to the market places of the early colonies. It was the products of the land that were brought to William Penn. It wasn't insurance policies and the bonds of joint stock land banks. It was hogsheads of tobacco. It was molasses. It was homespun. Not pieces of paper. It was something that the hand of man reached down into the earth and pulled out of it. It was something that the women, sitting by, the spinning wheel, with one eye on the children and one eye on the lurking Indian, with one hand on the spinning wheel, and one hand ready to grab the musket, made out of the products of the earth. And when this nation g[illegible] When the peasant immigrated from the lands of limited opportunity to the land of unlimited opportunity, and when he left behind him his Katrinka, or his Mimi, or his Lucy, and he came here to establish a home and to send for her later, he didn't come here to sell pieces of paper. He got a pick and a shovel and an axe and a musket. And the government gave him a piece of land, and he used the ax to clear it. And he used the shovel to dig a foundation for his home. And he used the musket to protect it. And after he had cleared the wilderness, and after he had built his home, he used his hands with which to wrest from that cleared land, with the help of Mother Nature, a product from her heart that he took into the market places, and he exchanged it for pieces of metal, and those pieces of metal he exchanged for pieces of paper, with which he brought his dear ones overseas to their new home. In this, their land. Our land of *unlimited opportunity* with *equal opportunity* to each and every one. And after they

were here and the years rolled by and the frontier was pushed back and the savage was tamed, and life became more complex, along came some bright soul, and he said, "The vicissitudes of life are many. Here, take some of the pieces of paper that came from the metal that came from the product that came from the land, and I will see that when you are gone, your loved ones can remain in this, their home." And so was born the first insurance policy of the United States. Quite a few steps removed from the land, and we wonder what those old pioneers would have done had they realized, had they dreamed, that a century later, after the Union that they twice defended, and once brother fought against brother to preserve, that the holder of those pieces of paper, five times removed from the land, sold to them to keep their children and their wives on the land, would come to their descendants and say, "Now you can't keep your land. Now your wives and your children can't stay on the land. Where you watched tiny sapplings grow into great towering trees. Where you have watched your house grow as your family grew. You can't stay there any longer. *We are not even going to give you a chance to try to stay there any longer.* When you mortgaged to us your land, you also mortgaged to us your heart. When you mortgaged to us your land, you mortgaged to us your right to equal opportunity. When you mortgaged to us your land you mortgaged to us your liberty." We wonder what the pioneers of those days would have said to that?

On page 22 Noel says:

> "Then, as in every age, laws of bankruptcies were passed in response to commercial necessity, and to the control of such laws the commerce of the world, to a considerable extent, owes its gigantic proportions."

The proposition of permitting a debtor to remain in possession of his property, is nothing new in the history of bankruptcy. The *Statute Merchant* and *Statute Staple* were practices which arose in pursuance of 13 Edward I, Stat. 3, c. i., and consisting in entering security before the Mayor of London or the chief warden of a trading town whereby the lands of a debtor were conveyed to the creditors until out of the rents and profits derived from the property, there was sufficient to satisfy the debt. The former was also entitled *Action Burnel*, from the place of its enactment. As statutes providing for the collection of debts, they are the earliest in English jurisprudence, having been enacted in 1283. The statute, *de Mercatoribus*, closely followed, enlarged and applied *Action Burnel*.

Noel, pp. 22, 23, giving references.

Blackstone points out that bankruptcy is a "compassionate remedy," but only as a remedy for the "industrious trader."

"Commentaries," Cooley's edition, II, 474.

Noel says, p. 27:

> "* * * every change in the laws was a response to the requirements of business. A little later was recognized the economic and social advantage obtained by expediting the return of the unfortunate trader to solvency and society."

It is nothing new for bankruptcy to recognize the rights of the debtor. Noel points out that this was done as early as the reign of Queen Anne, the change in the Bankruptcy Act at that time coming in response to a change in the national psychology regarding bankruptcy.

Noel says, p. 28:

> "Provision for discharge was included in the view taken by legislators during the reign of Queen Anne. At that time debt was not looked upon as a crime, as Englishmen of an earlier and quite frequently of the present age regard it, and for the first time the rights of the debtor as well as those of the creditor were considered in formulating a law. Upon giving up, without fraudulent concealment, all his effects for distribution among his creditors, the debtor was exempted from the exactions of the judge-made law whereby he might have been confined, even though in reality there was nothing to satisfy the obligations. * * * This act of 1706 also permitted the bankrupt to retain certain valuables, and is, perhaps, the origin of exemptions. Discharges were readily obtained, and allowances of three *per centum* to ten *per centum* were not rare."

The doctrine of voluntary bankruptcy was not recognized by the British government until the statute of 6 George IV, c. l., in 1825.

Noel points out in his conclusion to his historical review on bankruptcy legislation in foreign countries, that there has been a constant struggle between the debtor and creditor classes, and especially the greed of larger creditors. In his conclusion he says, p. 32:

> "It is obvious that the system discussed above is an evolution of beneficient principles and a development of procedure. It is the outcome of the struggle between the debtor and the creditor classes, for and against big commercial interests and with officialism."

2.

BANKRUPTCY LEGISLATION IN THE COLONIES

AND STATES PRIOR TO THE CONSTITUTIONAL CONVENTION.

The great colonizer, William Penn, sage of all time, made no more classical remark than that.

> "Governments like clocks go from the motion men give them and as governments are made and moved by men, so by them are they ruined too."
>
> Hazard, "Annals of Pennsylvania," I, 491.

And a worthy twin to this sage remark is his other statement, (Noel, p. 40):

> "The true design of all punishment is to reform, not to exterminate mankind."

So hence, as soon as a little commerce developed in the colonies, the blind greed of a small minority, oblivious of the fact that its welfare, was indefatigably linked to that of its fellow men, manifested itself, as it has in all periods, and in all countries.

Without becoming too didactic concerning the history of advantages of land owning, it might not be amiss to quote the following extract from Noel, p. 50:

> "On May 5, 1682, the celebrated 'Frame of Government of the Province of Pennsylvania in America: Together with certain Laws agreed upon in England by the Governor and divers Freemen of the aforesaid Province' contained the first specific legislation affording a remedy for debt. It provided that all lands and goods should be held liable for the payment of debts, unless there be legal issue, and then all goods but *only one third of the land.*"

And it might be of interest here to note that in 1683 the practice of the province of Pennsylvania originated the appointment of three appraisers to value the property of the debtor whose goods had been seized upon execution.

THE CONSTITUTIONAL CONVENTION OF 1787

As Noel points out the law givers of the world had been familiar with the principles of bankruptcy jurisprudence for more than eight centuries, and for practically 200 years the Anglo Saxon race had legislated for the remedy and relief of the commercial debtor and creditor, when the delegates to the Federal Convention met at Philadelphia May 14, 1787. Space does not permit even a concise abridgement of the review this great student gives of the trade and commercial conditions of the country at that time.

And in his review of the constitutional conference of 1787, Noel points out that the congressmen were then "more frequently laboring for the local than the general welfare," and says, p. 69 note:

> "Even in the Convention this particularism was regretable, for, Gouveneur Morris, who wrote the draft of the Constitution, remarked that, 'The States, he found, had many representatives on the floor. Few, he feared, were to be deemed the representatives of America.' Madison, 'Journal of the Constitutional Convention,' Elliot's 'Debates', (1845) vol. V, p. 291."

But it was recognized by the patriots of the Convention, that the central government had to be a strong government. That with respect to such subjects, especially as agriculture, commerce, and revenue, (Vide Hamilton), the power of the Federal government had to be supreme and free from any reservation of power in the states.

In citing from the "Secret Proceedings of the Federal Convention," page 96, Noel says, p. 92, quoting James Wilson:

"'The Declaration of Independence preceded the State constitutions. What does this declare? In the name of the people of these States we are declared to be free and independent. The power of war, peace, alliances and trade, are declared to be vested in Congress.'"

Mr. Hamilton replied:

"'*I agree to Mr. Wilson's remark. Establish a weak government and you must at times overleap the bounds. Rome was obliged to create dictators. Cannot you make propositions to the people because we confederated on other principles? The people can yield to them if they will. The three great objects of government, agriculture, commerce, and revenue, can only be secured by a general government.*'"

Note what Alexander Hamilton stated. "The three great objects of government, agriculture, commerce, and revenue, can only be secured by a general government." And thus, one of the greatest of all Americans, placed agriculture first.

Between the time of the effective date of the Constitution in 1789, and the passage of the first national bankruptcy act in 1800, insolvency laws of the different states were applicable. The description of Newgate prison, which consisted of an old copper mine in the hills, where at one time, more than a hundred were imprisoned and "fastened by their feet with iron bars, and by their necks with chains to beams in the roof", seems unbelievable, as does his description of other debtor prisons at that time. (Noel, p. 71.)

Showing that human nature, when oppressed by the burden of debt, does not change, we might refer to Noel's description of the conditions in 1786. He says, p. 72:

"Commerce and trade throughout all but a few of the States were at lowest ebb in 1786. Forty-two millions of dollars of war debt faced the Federal Government, while in all of the States the private debts were enormous. In Massachusetts alone they totalled one million, three hundred thousand dollars. Lawyers who attempted to collect claims were treated with violence, and the profession was held in the utmost contempt. Open and armed resistance was made to actions of distress. In Massachusetts an angry mob of over a thousand for many months impeded legislation and the procedure of the courts, insisting on the abolition of all debts and clamoring for equal land rights."

This description might well have applied to the situation in conservative Republican Iowa, as well as other states in the Union, in the year 1932.

Noel says, p. 72:

"Professor Beard reviews the operation of the *Articles of Confederation* in his contention that the *Constitution of the United States* was an economic document, 'originated and carried through principally by four groups of personalty interests which had been adversely affected under the *Articles of Confederation*: money, public securities, manufacturers, and trade and shipping, on the one hand as opposed to the farmer and debtor classes on the other, and adds the following in paraphrase. 'Small farmers were frequently in debt to other folks for land; there were rebellions in Massachusetts by Shays and a thousand followers, maintaining equal property rights and the enforcement of the Agrarian laws; disturbances in Rhode Island and New Hampshire and other northern States; the advocates of paper money were constantly agitating innumerable schemes for the relief of the debtor, as paper money, abolition of imprisonment for debt, laws delaying collections, and exemption laws, and those requiring creditors to accept land in lieu of specie at a valuation fixed by a board of arbitration.'

"The philosophy of the debtors was reflected in the writings of Luther Martin, a delegate from Maryland to the Convention, who disapproved of the *Constitution* because it stopped Agrarian legislation. He wanted the States to retain the right to issue paper money and also the power to annul contracts. Martin was a champion of the extreme States' Rights view, and was democratic and far advanced for his times in matters of Political Economy. His argument was for the retention of this power for times of great public distress or calamity, to enable the States for the preservation of the most valuable part of their citizens to pass 'laws totally or partially stopping the courts of justice, or authorizing the debtor to pay by installments, or by delivering up his property to his creditors at a reasonable and honest valuation.' Reviewing the past, he adds that, such power has been used to advantage in former years, and was likely to be more useful in the future. 'The principal cause of complaint among the people at large at the time of the Convention was the public and private debts with which they were oppressed.'

Noel in his review, continues, p. 74:

"Under the jurisdiction of the *Articles of Confederation*, the creditor classes resisted all schemes for the relief of these private and insurmountable debts, and they suffered considerable losses from the application of State insolvency laws. There was constant strife. The absence of laws protecting manufacturers in interstate and foreign dealings, lack of security in the Western Lands and contentions over their ownership, paper money, stay laws, pine barren acts, the derangement of the monetary system and coinage due to non-uniformity in standards which were, for the most part, foreign, at length turned the inhabitants to 'the relief of forming a new national government, so devised as to preserve the sacredness of contracts, emitting a safe paper money and so forth for the benefit and security of trade.'"

In further reviewing the Constitutional Convention, he said, p. 75:

> "The result of John Fiske's careful study of this period must not be omitted. He presents new and comprehensive views. Through the interruption of commerce and the extravagant issue of paper money during and subsequent to the Revolution, debt was prevalent among the States just prior to the Constitutional Convention. In 1780 Connecticut had wisely adjusted all relations between debtors and creditors. Massachusetts and Rhode Island, then preeminently maritime colonies, were not so fortunate. Shipbuilding, oil, fisheries, lumbering and the rum industry were all destroyed. Rhode Island had too long supported the enemy's troops. 'Nowhere, perhaps, was there a larger proportion of the population in debt, and in these preeminently commercial communities private debts were a heavier burden than in the somewhat patriarchal system of life in Virginia and South Carolina. In the time of which we are now treating, imprisonment for debt was common. High-minded but unfortunate men were carried to jail, and herded with thieves and ruffians in loathsome dungeons, for the crime of owing a hundred dollars, which they could not promptly pay. *Under such circumstances, a commercial disturabance, involving wide-spread debt, entailed an amount of personal suffering and humiliation of which in these kinder days we can form no adequate conception.... It tended to make the debtor an outlaw, ready to entertain schemes for the subversion of society.*'"

Also see Fiske, "*The Critical Period of American History*," 172.

This condition, it will be noted, is merely typical of that which exists today. And it was in this atmosphere that the Constitution was drafted.

In reviewing the diverse interests that sought to construe the Constitution after its passage, Noel says, p. 82:

"For many years after Rhode Island, the most recalcitrant of the States, had ratified the *Constitution* and it had become a part of the fundamental law of the land, a controversy was waged between the strict and loose constructionists as to whether the *Constitution* was a crystallized document *totidem verbis*, incapable of enlargement and construction, or a thing of life, a verdant stem able to bud and blossom in response to the harsh or gentle winds of time. Many contended that it was static, possible of only that interpretation which was in the minds of the originators, which in regard to this subject was thoroughly English. For, as Luther Martin said, 'We were eternally troubled with arguments and precedents from the British Government.' It is incontrovertible that for a model our forefathers looked across the Atlantic to the country whicIr they knew best. The English origin of the *Constitution* can be proved by comparison with the English statutes of the period, and a biographical sketch of the members of the Convention establishes beyond question that the English pattern was always before the framers. But 'the members of the Convention did not study the British statutes, nor examine judicial decisions, to ascertain the precise nature of the actually existing system of bankruptcy in England. Still less did the people of the United States trouble themselves with such inquiries.'"

Noel cites Webster, "Works," V, 7, in support thereof.

Noel's conclusion of his scholarly review of the Constitutional Convention can not be surpassed. He says, p. 84:

"The Convention which produced it was a parliament of wise men, who knew full well what they were about to do. Their motives and intentions are unmistakable. They realized the perplexities of the situation and confronted them with unprejudiced minds and with hearts determined to solve them honestly. In this spirit good institutions and

beneficial doctrines were woven into the fabric of the *Constitution* without regard to the source. They had all felt the oppressor's hand. Some, it had forced to migrate to an unknown land, others, it had forced to take up arms in selfdefense; and they were naturally inclined to incorporate liberal and wise provisions for the benefit of all classes in the basal law they were about to propose. Furthermore, they realized that 'society is ever in a state of flux'; but also that some land-marks are premanent.

"This Government is founded upon a compromise of interests, and it is illogical to suppose that it can not be adapted to the changing relations of those interests. To say that the bankruptcy clause of the *Constitution*, together with other clauses in similar circumstances, is incapable of evolution and adaption, will, if the principle be consistently followed, arrest all political growth and refute the truism, 'It is a wise generation that knows itself and its own.'. What has been said by Blackstone of the American *Constitution*, is applicable to this clause of the *Constitution*. 'Its source and lines of development stretch far back into the past,' and it is foolish to deny that what has a past can not have a future, but while it exists, must remain in *statu quo*. Calm reasoning will lead to the conclusion that the bankruptcy system of the United States, while a matter of special creation in Convention times, was never intended to be an inanimate section of American juristic life, but to be capable of enlargement and extension to accomodate the convenience and need of every citizen of a great commercial republic."

4

"THE CONGRESS SHALL HAVE THE POWER . . ."

Now comes the Constitution. Noel says, p. 85:

"The answer to the question, 'Wherein resides the sovereignty of the United States?' has always been the same. 'It cannot too often be insisted

that in the United States all political power resides in the people.' The main struggle over the regulation of bankruptcies centers on the *locus* of the sovereign power."

And Noel continues, p. 86:

"There are many opinions of eminent statesmen and lawyers which justify the above statement. As a general principle of international law, 'In the republican (form of government) the people in a body possess the sovereign power. And that this principle was known and applied is evidenced by the second article of the *Virginia Bill of Rights* of June 12, 1776," 'That all power is vested in, and consequently derived from, the people.' A learned judge analyzed the situation thus, 'Its (the government of the United States) powers are granted by them (the people), and are to be exercised directly on them, and for their benefit.' Daniel Webster argued in harmony with the provisions of the *Constitution* when he said, 'The National government possesses those powers which it can be shown the people have conferred on it and no more. All the rest belongs to the State governments, or to the people themselves.' "

And who were the people at the time the Constitution was signed? Practically all farmers.

With reference to the bankruptcy clause of the Constitution, Noel says, p. 98:

"From a constitutional viewpoint, there are two principles of the bankruptcy law which were the causes of contention; the endeavor to obtain uniformity of the laws, and the impairment of the contract by the discharge of the obligation without fulfillment. The power of the Congress was granted to it by the *Constitution* and the grant is founded on expediency. There are no limitations on the legislative department of the Government in regard to the impairment of contracts and the repudiation of debts except that of uniformity of administra-

tion, and those which the policy of the Nation or the general welfare imposes. This has long been generally admitted. Mr. Tyler, of Virginia, argued for the discretion of the Congress in his reply in the House to the assertion that it was the duty of that body in every instance in which the *Constitution* gave power, to exercise it. He said:

"The gentleman's position leaves us no alternative. Our discretion is taken from us—our volition is gone. . . . . Inasmuch as the Constitution confers on Congress the power to adopt a uniform system of bankruptcy,—according to his doctrine, we are not to enquire into the expediency of adopting such a system, but must yield it our support. . . . . What, sir, is the end of all legislation? It is not the public good? Do we come here to legislate away the rights and happiness of our constituents, or to advance and secure them? Supose, then, by carrying into effect a specified power of the Constitution, we inflict serious injury upon the political body; will gentlemen contend that we are bound by a blind fatality, and compelled to act? Sir, such a doctrine cannot be supported. . . . . The powers of this *Constitution* are all addressed to the sound discretion of Congress. You are not imperatively commanded, but authorized to act, if by so doing the good of the country will be promoted.'"

President Buchanan said on this subject:

"'. . . . . power and duty are very different in their nature. Power is optional; duty is imperative. The language of power is, that you may; that of duty, you must. The *Constitution* has, in the same section and in the same terms given to Congress the power to declare war, to borrow money, to raise and support armies, etc. Will any gentleman, however, undertake to say that we are under the obligation to give life and energy to these powers, by bringing them into action? Will it be contended, because we possess the power of declaring war or of borowing money, that we are under the moral obligation to embroil ourselves

with foreign powers, or load the country with a National debt?

"'Power, whether vested in Congress or in an individual, necessarily implies the power of exercising the rights of sound discretion. The Constitution was intended not only for us, and for those who have gone before us, but for the generations yet to come. It has vested in Congress ample powers, to be called into action, whenever in their sound discretion, they believe the interest of the happiness of the people require their exertion. We are, therefore, left to exercise our judgment on this subject, entirely untrammelled by any constitutional injunction.'" (Speech in the House, March 12, 1822.)

How classic is this expression, when we consider the decision of this great court when it said that emergency does not create power, but calls into being power lying dormant in the Constitution, ready to be exercised when the needs of the people demand it. The parts of the fundamental law which relate to bankrupteies are stated as definitely and explicitly as those which apply to the subject of naturalization.*

Noel says, p. 103:

"It is necessary to define the meaning of the words 'bankrupt' and 'bankruptcy' within the meaning of the *Constitution*. The conclusion early arrived at was that a law on the subject of bankrupteies, in the sense of the *Constitution*, is a law

*The judgment rendered in *Sturges vs. Coowninshield*, was distinctly confirmed in *Farmeos' & Mechanics' Bank vs. Smith*, 6 Wheat, 131; *Smith vs. Mead*, 3 Conn. R. 253; *Boaodman vs. DeFoocst*, 5 Conn. 1; *Rroosevelt vs. Ceboa*, 17 Johns 108, and *Kimbeoly vs. Ely*, 6 Pick. 451.

Ogden vs. Saunders was argued with unusual completeneba by eminent counsel and given months of study by the court. It was re-affirmed in *Blanchard vs. Russell*, 13 Mass. R. 1; *Hemstead vs. Read*, 6 Conn. R. 480; *Betts vs. Bagley*, 12 Pick. R. 572.

On justification of loose construction, cf. *McCulloch vs. Maryland*, 4 Wheat. 316; Story, "*Commentaries*," II, 47 *et. seq.*, and Thorpe, "*Short Constitutional History of United States*," 316.

making provision for persons failing to pay their debts. Whenever a man's means were insufficient to meet his engagements, it was considered that the condition of bankruptcy had arisen.'"*

Concerning the power over bankruptcies that was given to Congress, Noel says, p. 106:

"Even if the framers of the Constitution did look to the English system of their day, it does not follow that they intended to fetter their country with an imitation of the contemporary English statutes. Although there is evidence that this system was in the minds of the delegates, and that the first American law was but a transcript of it, still it is also a matter of record that the commercial and financial organizations of other countries were known to the members of the Convention. And no one has ever been able to substantiate the theory in regard to any social institution or branch of law, that the offspring should remain rigid, inelastic and petrified, while the parent system was developed. It is unreasonable to impute to the Federal Convention and the State ratifying conventions the intent to deny all future modification and development. The early English system regarded financial failure as a crime and its application embraced all persons. It has changed many times before and since 1787, and no one logical mind would argue that, even if we are bound to follow the English model, we could not notice and adopt modern improvements in it, but must confine ourselves to the one in use in 1787.

In such reasoning the ultimate criterion has not been used as a basis. To discover this one must look beyond the two systems and compare their causes—the powers which created each. These powers must be compared to comprehend the true analogy. The argument based on a comparison of the power of the Congress of the United States with the creation of the Parliament of England was a fallacy. The true criterion is power, the power of the Congress and the corresponding power of the Parliament, and then, since the Parliament had, at the time of the Convention, original and unlimited power, it will be readily admitted by the most strict interpreters of the Constitution that its framers intended to confer such original, unlimited and exclusive power, in respect to this branch of legislation, on the law-making body of the new Nation. To be consistent the same rule of interpretation must restrict innovations of the laws on the subject of patents, copyrights, etc., all of which are transcripts of the English statutes. To follow this principle in all similar cases would render the Government static as well as inefficient to provide for the new and complex problems and institutions of a progressing people, prevent adaptation of existing measures to changing circumstances and crystalize the Government in the form and condition which existed when the Constitution was framed; but it is not justifiable to apply the rule in one case and not in all.

The delegates exercised exceeding care in working out a scheme by which, for the benefit of the finances and commerce of the republic, the Congress was confided with the exclusive power of fixing the value of and coining money, of standardizing it further by prescribing the issue of State bills of credit, and in every way standardizing the medium and methods by which contracts and debts are discharged. This aim would be defeated if, after all, the States should retain the right to declare that contracts may be discharged upon the payment of three-fourths of the obligation,

And he concludes his review of the words in the Constitution, "The Congress shall have power * * *", by saying, p. 109:

> *"Only by unlimited, unrestricted and undivided power in the execution of this trust by the Congress can the original idea of the framers of the Constitution be carried into effect. This principle holds to-day, as well as prior to, during, and since the adjournment of the Constitutional Convention. The needs and desires of the people must be considered the first and universal rule of interpretation. A constitution is composed of static, fundamental principles; the general welfare and enlightened public opinion of every generation should be the living law."*

5.

". . . TO ESTABLISH . . . UNIFORM LAWS ON THE SUBJECT OF BANKRUPTCIES THROUGHOUT THE UNITED STATES."

Noel says, p. 111:

> "In order to realize the confusion arising from the multiplex and discrepant State laws for the release of the debtor and the distribution of his effects, prior to the enactment of the Federal law, it is necessary only to consider the inconvenience and injustice which result from lack of uniformity in our day in the various State laws on divorce, shipping, and insurance. American citizens to-day would not tolerate such a condition as that of debtors before the promulgation of this salutary law. The misery, the wretchedness, the suffering, the

as in the case of *Ogden versus Saunders* under the New York law of 1801, or as in some of the States, without any payment at all. If it was intended by the delegates to allow the States to retain the power of setting up laws which would remit even present debts, the clause of the tenth section would not have been inserted as an impediment. No great or important political object would have been attained thereby, for future debts soon become present debts."

despair, the crime and the injustice of those years are now scarcely comprehensible."

And thus we see that the quality of mercy is inherent in the exercise of the power to legislate on bankruptcy. That it was necessary in the early days of the Republic, and when there was no national bankruptcy law to protect the debtor. Extracts from Noel's review of the period during which no national bankruptcy act was in existence, is illustrative.*

On page 113, he says:

"By Penn's code in colonial times, tools, etc., were exempted, and later Pennsylvania enacted a law similar to that of New Hampshire. But during times of panics and bank failures, the Keystone State imposed the condition that banks could not obtain executions until they resumed specie payments. Virginia had the same rule, which originally had been enacted in 1837. In Ohio, upon demand by the debtor, the sheriff or constable about to sell property taken in execution for debt was required to summon three house-holders of the county to determine the money value of each article. Unless at public auction the article brought two-thirds of the assessed value it was not permitted to be

*"Some of the accounts of these early days read like tragedies. To the misfortunes of the debtor class, due to lack of comity and harmony among the laws of the several States, indeed to the conflict and repugnance of the State laws, were added the hardships arising from their instability and viciousness. For many years, according to Webster, the usage was, 'Having the power to establish uniformity, we delegate by sufferance the authority to create variety.' This condition and its results can best be explained by a description of the operation of the various State laws. Belknap, in his *History of New Hampshire*, described the working of the law of that State. A tender law was enacted in 1785, and had it been vigorously executed, it is probable that two-thirds of the community would have been in prison for debt. Its purpose was to release the debtor from prison upon the tender of his real or personal property in lieu of money. In its intent it favored the creditors, for if the goods tendered were not acceptable, they could refuse them, take out an *alias* within a year, and levy on any property of the debtor which could be found." (Noel, p. 112.)

sold, and this law was enforced by public demonstrations. Indiana required the same appraisement but the property could be disposed of at one-half of the assessed value. Farming implements, kitchen utensils and household goods were not salable for less than the prescribed one-half. This act failed to prevent the sacrifice of property. Well-cured hay was knocked down for one dollar a ton, and a Dayton newspaper reported that five hundred acres of wheat were sold for six dollars. A tax-collector of southern Illinois reported that men in his district were eager to work out their taxes at the rate of twelve and one-half cents per day. As the slaughter continued, the words 'fair value' were generally substituted for a specified percentage of the true value, and this arbitrary standard gave rise to greater complications. Illinois also required that the appraised value be written on the execution. Michigan had the same laws, but added a condition that the real estate could not be attached unless the personal property was insufficient to satisfy the claims. The creditor was allowed ten days in which to accept the property thus available, at the expiration of which time the sheriff was authorized to endorse a discharge on the levy, and the creditor was forced to pay the costs. By the laws of Mississippi, if the property did not obtain a bid of two-thirds of its appraised value, the writ was stayed a year."

It will be noted that this law with respect to the value of the property was made necessary by the unnatural attitude of the creditor classes, which, having the right to bid in the property, did so at these ridiculous figures. The Gods of Greed have the same policy today.

A TYPICAL INSTANCE JUST REPORTED

Take a typical case recently reported. In this case the Chemical Bank and Trust Company had a mortgage on a woman's home. It foreclosed. The mortgage was

for $10,000.00. It got a decree for $11,000.00. It bid the property in for $500.00, and took a deficiency judgment for $10,500.00. Six months later it sold the property for $12,000.00. In the meantime the little lady had obtained some property, so these generous gentlemen promptly issued a deficiency execution against her for the $10,500.00 deficiency. Instead of being crushed, this particular mouse uttered a protesting squeak, with the result, that she hired lawyers, and they happened to find some statute of New York under which this deficiency execution could be restrained. This is the case of *Chemical Bank and Trust Company* v. *Adam Schuman Associates*, 268 N. Y. S. 674.

The opinion of the Supreme Court of New York in that case is extremely illuminating, as illustrating the condition that confronted this country at that time. The court said, p. 76:

> "What 'basis of fact or circumstances' exists for challenging this travesty, miscalled an auction sale? It seems almost superfluous to call some recent happenings to mind. Ten months ago every bank in the land was closed and a lamentable number of them have never since reopened. Substantially all of the mortgage guaranty companies in the state are being wound up, or, stated less bluntly, 'rehabilitated,' and thus a great industry, the backbone of building, as well as of conservatism and thrift, is in ruins. The insurance companies, savings banks, and trust estates, formerly generous providers of mortgage money, are literally surfeited with holdings of real estate through foreclosure or default. The legislatures of various states, including our own, have declared the existence of a public emergency and enacted laws designed to relieve helpless debtors. The federal government, through sheer necessity, has embarked upon a tremendous lending program in an effort to save the homes and farms

of the distressed. Banks have largely abandoned their time-honored function of accommodating the worthy borrower and, instead, pride themselves upon their liquidity, refuse to pay interest on deposits, and bring forward fatuous schemes of charging depositors for safeguarding and using their funds. Possession of the very gold with which this judgment debtor doubtless covenanted to pay her obligation is now declared a crime. Every day at the real estate exchange witnesses the solemn, but costly, farce of offering dozens of parcels of valuable realty, which go to the respective mortgagees without a single competing bid.

"It was into this maelstrom of economic forces that Margaret Ferguson was plunged through the default of her grantee and the consequent election of the plaintiffs to call their loan. The law presumes that a wide-awake debtor will, under such circumstances, apply to and obtain, from another lender, equivalent accommodation and thus protect herself against a possible deficiency judgment. Such a presumption is well enough in normal times, but it has no proper place in a topsy-turvy period, like the present. In truth and in fact, mortgage money is, and for some months has been, practically unobtainable, and one need do no more than compare the day-to-day record of mortgage transactions with those of a year or two ago, to satisfy himself on that point. These considerations lead to the conclusion that the sale price of the property was so grossly inadequate that no rights, except possibly, those of innocent third parties, can be predicated thereon, and further that there is a sound 'basis of fact and circumstances' for equitable intervention."

Noel concludes his review of the necessity for a "uniform system of bankruptcy", by saying, p. 119:

"It is unnecessary to add more instances to prove that the lack of a uniform system of bankruptcy laws was responsible for a lamentable condition. Its results can be easily imagined. It is estimated that about 1833 seventy-five thousand

persons were sent to jail each year for debts. From documents used in the Senate of New York in 1817, it appears that the keeper of the 'Debtors' Jail' in New York City reported that during the preceding year nineteen hundred and eighty-four debtors were confined, and that more than six hundred were always in the prison or on its limits. In this report the sheriff of the county certified that seven hundred and twenty-nine were imprisoned for debts of less than twenty-five dollars. In 1833 in New York there were ten thousand people imprisoned for debt, seven thousand in Pennsylvania and three thousand in each of the States, Massachusetts and Maryland. The jails of Boston during 1828 held one thousand and eighty-five unfortunates; the creditors of Philadelphia confined during only eight months of 1829 eight hundred and seventeen, of whom eighty owed less than one dollar. Baltimore, during the same year, had nine hundred and forty-four, and to complete the study of thirty-two prisons for the year 1820, there were two thousand eight hundred and thirty-one in jail for less than twenty dollars. At Carlisle, Pennsylvania, the sheriff at one time advertised twenty-seven tracts of land for sale, and a petition from Northumberland County in that State recited that 'debts were unpaid, creditors dissatisfied, and the jails full of honest but unfortunate persons whose wives and children had thereby become a burden on the township.' The people of Wayne County daily saw their property passing into the hands of rich speculators, while the citizens of Pike County asserted that their property was constantly being sold at one-fourth of its value. Sundry citizens of Huntingdon County presented a memorial to the Congress stating that, their property taken for debts was selling for less than sufficient to pay the fees of the officials. These accounts show that during the early years of the National era there was no improvement on the condition under the Confederation, which had no requisitory power, no independent judiciary, but could only recommend legislative and judicial measures. On account of the failure to apply the virtues of the new *Constitution*,

the commerce of the whole country was prostrated and almost ruined. Private debt was almost universal, bankruptcy and financial distress were the rule rather than the exception, and the maze of difficulties was so intricate that few were hopeful of ever enjoying the promised freedom, happiness and success of the *Constitution.*"

It must be remembered that this period was that which existed in the nation between the repeal of the Bankruptcy Act of 1800 and the passage of the Act of 1841. That just as the Bankruptcy Act of 1800 had to be passed in order to cure the evils which the cruelty of states' legislation perpetrated, so was it necessary again to pass the Bankruptcy Act of 1841 to cure the same dreadful evils which arose because of the greed of the creditor classes, as soon as the restriction upon them was removed.

This review, fragmentary as it is, from the greatest historical treatise on the bankruptcy legislation extant, might also be considered a review of conditions today. How apt are these words: (Noel, p. 120)

> *"Private debt was almost universal, bankruptcy and financial distress were the rule rather than the exception, and the maze of difficulties was so intricate that few were hopeful of ever enjoying the promised freedom, happiness and success of the Constitution."*

6

THE LAW OF 1800

Noel says, with respect to the bankruptcy law of 1800, p. 131:

> "The first of the Federal bankruptcy acts, like a law discharging debtors from prison, alleviated the condition of merchants and speculators who had been ruined in the late panic, 'and proved a mere sponge for enabling the debtors to wipe out at

> their creditors' cost what they owed them.' Other causes of its failure and early repeal were its obvious design to protect creditors, which it failed to accomplish and thus disappointed all classes, * * * * * "

Citing Schouler, "*History of the United States*", II 26; also I, 468.

Among reasons assigned by Noel for the failure of this law was primarily that "it neglected the agricultural interests". And as he says, p. 132:

> "It was claimed that the system of England, a commercial country, could not be made serviceable in the United States, an agricultural country, and in this Country the method of handling failures by the State insolvency laws was strongly advocated. The most general objection to it arose from its limitation to the affairs of the merchants of the country."

Thus showing a specific distinction had to be made between the necessities of a purely commercial people, such as the English, and an agricultural people, such as those in the United States. Noel calls attention to the fact, however, that Justice Story lamented its repeal, and considered the law an excellent one.

7

THE LAW OF 1841

From 1804 until 1840 was an era of state insolvency laws. "The distress of that period was unprecedented in the history of the country." Great commercial losses resulted from the embargo on trade with France and England. The charter of the First United States Bank expired, and the circumstances caused a severe financial stringency until the Second United States Bank was

chartered in 1816. "Wilcat" banks added to the disorder. Lack of a suitable protective tariff at that time in the growth of the Republic, is alleged to have added to the desperate state of affairs. Commerce was in a deplorable condition.

Another cause of public calamity rose from the debt of $23,000,000 to the government for public lands. The debtors were no small proportion of the population, and mostly inhabitants of the new states and territories. The banks which had been depended upon to take care of the settlers, failed, and when the installments came due, they were defaulted. Financial conditions throughout the country on this account became deplorable. The deficit of the Treasury had increased to more than $13,000,000.00. This is not a description of the condition from 1931 to 1934! It is abridged from Noel's description of the period from 1804 to 1840.

Noel, pp. 134, 135,136, and 137.

And the following quotation from Noel is singularly apropos, page 136:

> "There were repeated attempts during the administration of Van Buren to enact a bankruptcy law to relieve the disastrous results of the Jackson regime, which had thrown so many enterprising people into helpless indebtedness. One of the provisions of President Van Buren's plan to restore the commerce of the Country to prosperity after the gloom of 1837 was the making of a bankruptcy law applicable to corporations and banks. This was recommended in his first message to the Congress, which was successfully controverted by Daniel Webster, the opposition leader, analyzing the message in his speech on the *Payment of the Fourth Installment of the Surplus Revenue.*"

The bankruptcy law of 1841 was largely the work of

Daniel Webster, who, as Senator from Massachusetts, drafted and proposed the measure. This law introduced the principle of voluntary bankruptcy into our legislation. It was substantially for the benefit of debtors, and was originally reported as a purely voluntary measure. The Act was passed August 19, 1841, went into operation February 2, 1842, and was repealed about 18 months after its enactment.

The following historical review of the position of Henry Clay, is particularly appropriate at this time. Noel says, p. 142:

> "Henry Clay spoke in favor of the act in the Senate on January 17, 1842. He stated that, under the administrations of Jackson and Van Buren there was a numerous class of enterprising men who had been ruined beyond hope of relief, except by a bankruptcy law. In such case it would seem to be a humane law, although it might be unjust to the creditors on account of the undue advantage which would be taken by some not entitled to its benefits. His constituents as well as numerous petitioners from New York, Maryland, Pennsylvania, New Jersey and Massachusetts, did not wish the law's operation impeded. He rebutted the objection that the bankruptcy bill, if permitted to operate, would throw hundreds of millions of dollars worth of property on the market as a sacrifice, by calling attention to the fact that under the jurisdiction of the common law or the State insolvency laws, the same amount of property would fall under the hammer of sheriffs without competition to raise the price or the creditors obtaining a proportionate share of the proceeds of the sale. The appalling condition of the country, in his opinion, demanded the law; hopeless debtors were depending on it to relieve them of their misery, and the business men of the country were arranging their affairs in conformity with it."

In *Sackett v. Andross*, 5 Hill 327, the court said, (Noel, p. 143):

> "Bankruptcies applies to all persons unable to pay their debts,—the power of the Congress is not restrained to any particular mode of discharge, voluntary or involuntary; it can relieve antecedent contracts as well as those entered into subsequent to the passage of the law; and the *ex post facto* prohibition of the Constitution refers to criminal offenses only."

THE LAW OF 1867

The next bankruptcy law, that of 1867, was passed as a result of the aftermath of the Civil War. It was said that in 1864 there were over 100,000 hopeless debtors in the loyal states of the Union. There were received by the Thirty-Seventh Congress, 40,000 petitions for the enactment of a bankruptcy law. The first session of the Thirty-Eighth Congress was largely devoted to war measures. But in the early days of the session a bill for a bankruptcy law was introduced into the House, and a motion carried to appoint a committee of nine members to consider the subject. Mr. Jenckes of Rhode Island, was appointed chairman of this committee, and reported the bill.

Noel says, p. 149:

> "In making the report Mr. Jenckes summarized the bill as presenting unusual claims at a time when all the business interests of the country were in a constant state of agitation. The grant of the power implied its exercise as a duty. He said, the power which is now invoked had been exercised intermittently, at long intervals, to meet exigencies in the business of the country, and the laws had

been repealed before they had formed the basis of a system of legislation. In this Country there neither is nor can be any privileged classes which could exclusively enjoy the benefits of such a system of laws. All are liable to insolvency, and all are equally entitled to relief. This was Mr. Jenckes' reason for extending the bill beyond the traditional limit of merchants. His policy of including a voluntary feature was based on the conviction that in most cases, although not formally, the bankrupt's confession of his condition puts in motion the wheels of the law."

An interesting sidelight on the foresight of the Congress of today in providing for the conciliation and composition proceedings is the observation of Noel, p. 150:

> *"It began to be realized that too close connection with the Courts was one of the causes of failure of earlier laws on the subject of bankruptcies.—Insolvency is a matter between the bankrupt and his creditors."*

The chief objection to the bankruptcy law was the greed of creditors, who caused widespread misery and suffering by taking advantage of the involuntary provisions of the law, and forcing into bankruptcy numerous small businesses, who could have survived if given a little time. A situation identical to the farm foreclosure law of today. Noel says, p. 155:

> "The supreme test of the capacity of the law of 1867 was the memorable panic of 1873 which was due to over-speculation and consequent over-production in almost every branch of industry throughout the commercial world. In the United States the crisis came with the failure of Jay Cooke & Co., of Philadelphia, to realize on certain railroad securities. Between 1873 and 1876 mercantile failures amounted to $775,000,000, and defaults by rail-

roads to the sum of $779,000,000. Before the condition had subsided in 1878, 47,000 failures had occurred. The money loss was $1,200,909,000. The severity and extent of this crisis was aggravated by the insolvency section of the bankruptcy law by which were forced into the financial maelstrom thousands who with a little patience of creditors could have remained in business."

Citing Pile, *"Wall Street the Morning After"*; Hyndman, *"Commercial Crises"*, 100, 120; Dewey, *"Financial History"*, 370-72; Jugler, *"History of Panics"*, 95; Wiley & Rines, *"The United States"*, 440-50.

This law was repealed in 1878.

9

THE LAW OF 1898

The next bankruptcy law to be passed, is the present one. Noel's preliminary observations on this law deserve attention. He says, p. 157:

"The development of bankruptcy legislation after the repeal of the law of 1867 admirably illustrates the maxim that laws follow but never lead public opinion and that government is constantly in a state of mutation. To crystalize either the laws of a country or its social institutions would mean extinction to the government. New laws and new governments are never imposed on an unwilling people, but owe their existence and their strength to the closeness with which they interpret the desires of the governed. The evolution of the laws on bankruptcy during the last fifty years has been in the main, constant and beneficial. The debates of the Congress incident to the repeal in 1878 of the former law prepared the way for the composition of the far more adequate law of 1898. There are so many things to be provided for in a

> bankruptcy law that it is almost impossible for the intelligence of even a Congress to grasp all the points which may arise relative to the enactment of such a system of legislation. Time and experience tend to perfect all laws. The process of perfection continued from the time of the Forty-fifth Congress until the assembling of the Fifty-fifth without producing a substitute for the repealed law."

Again space will not permit a review of the many encomiums that Noel reprints concerning it. After all, it is sufficiently recent and sufficiently familiar for every one to form his own opinion. We pass from its consideration to the conclusion of the author, to whom the legal profession is so greatly indebted for a scholarly, philosophical, and understanding review of bankruptcy legislation. Unique and unsurpassed in its field.

10

SOME ASPECTS OF THE BANKRUPTCY RELIEF MEASURES. LEGAL, MORAL AND SOCIAL-ECONOMIC.

The conclusions of Noel to his remarkable dissertation, are worthy of serious thought at this time. The sweep of this man's mind, his grasp of the outstanding fact of which creditors are blind, that the good of the nation must be superior to the temporary aggrandizement of the individual, stamps him as possessing an intellect far above the average. He says, p. 181:

> Higher civilization demands for the individual civil liberty and equal opportunity; society needs the untrammeled effort of every honest man. A practical system for the relief of bankrupts because of the conflicting character of the ends to be accomplished, must inevitably complicate the task of the State. Such system should be an harmonious combination of the maxims of the law, the rules of

ethics and the principles of social-economics. It should be the result of the legal rights between man and man as tempered by Christian principles and the prerogative of society to receive the benefits of the labor of every member. The laws of bankruptcy are not designed solely for the interest of the debtor or of the creditor or indeed for their combined interest. The claim of justice and the commercial development of the nation also must be considered."

The following quotation is in Noel from the great Justice Story, "*Commentaries*," II, 48 *et seq*, in which he says: (Noel, p. 182)

> "*One of the first duties of legislation, while it provides amply for the sacred obligation of contracts, and the remedies to enforce them, certainly is, pari passu, to relieve the unfortunate and meritorious debtor from a slavery of mind and body, which cuts him off from a fair enjoyment of the common benefits of society, and robs his family of the fruits of his labor and the benefits of his paternal superintendence.*"

Noel says, p. 184:

> "Imprisonment as a means of enforcing the fulfillment of contracts, and thereby supporting credit, is uneconomic, since it strikes at the root of all personal effort on the part of the debtor to retrieve his position and to return to solvency. Hence, there is need for a system which while maintaining credit, is just to creditors, is not unduly burdensome to debtors, and which discriminates between the involuntary inability of the honest business man and the wilful or fraudulent neglect of the adroit rogue or abandoned profligate. Insolvency is forever a concomitant of the credit system. Therefore, in a contingency when full payment of a debt is impossible, the partial payment plan of the modern bankruptcy system is the best remedy. That its practical results fall short of its theoreti-

cal promise as a means of carrying out a contract, of supporting the credit system and indirectly contributing to the commercial success of the country is principally because its efficiency is not realized and appreciated as it should be by law-givers, business men or the people in general.

Such law should support credit in two ways, by placing limitations on the one receiving it and by providing an opportunity whereby the insolvent debtor may declare his true condition without the former disastrous consequences. Thus the resources of the creditors will be conserved. The sooner the condition of insolvency is published the better it is for all parties concerned, but the natural tendency of the hopelessly disabled debtor is to persist until the last chance of survival has vanished. This tendency can be likened to contact with a 'live wire'. The failing business man can not let go, but holds on until too late he realizes that to surmount his difficulties is impossible. Then has recourse to the bankruptcy law, the switch which releases him. Without this salutory remedy, the condition in the case of the conscientious man would not be relieved until he had worried himself into a grave."

And that is exactly the situation confronting the farming class at the present time. The farmer is the soul of honesty. Hence creditors can induce the farmer to beggar himself to prove his honesty. So that the recorders' offices in the agricultural counties are cluttered with chattel mortgages on livestock, implements, and crops, which the farmers give, thereby stripping themselves to the bone to make partial payments on delinquent interest and principal, the full of which can never be met.

The quotations heretofore made from the great Jurist Story are no sounder and no more classic in expression than the following quotation from Noel, p. 186:

"The relief of the debtor and his commercial restoration are important studies in the field of social-

economics. The abolition of imprisonment did not remove from the debtors all restraint and bondage. Without the *tabula rasa* of the system of bankruptcy laws, earning capacity is taken away, the faculty of usefulness and aptitude is paralyzed and hope is extinguished. 'Society can never prosper but must always be bankrupt, until every man does that which he was created to do.' Franklin appositely describes the debtor's state of mind.

'If you cannot pay at the time, you will be ashamed to see your creditor; you will be in fear when you speak to him; you will make your pitiful sneaking excuses, and by degrees come to lose your veracity, and sink into base, downright lying; for, as Poor Richard says, *The second vice is lying, the first is running into debt;* and again, to the same purpose, *Lying rides upon debt's back;* whereas a freeborn Englishman ought not to be ashamed or afraid to see or speak to any man living. But poverty often deprives a man of all spirit and virtue. *'Tis hard for an empty bag to stand upright!'*

This mental condition of a member of society brings to it no benefit. On the contrary, society must be seriously injured by the presence of unproductive or discontented members, who through idleness or vicious habits may eventually become public charges. If the laws of bankruptcies were based on the legal rights of individuals, there would be no warrant for the discharge of debtors from the payment of their debts as long as they lived, or their estates would continue to exist. But public policy makes it expedient that insolvent debtors, instead of being forever entangled by obligations as enduring as the task of Sisyphus, shall be given a fresh start in life under the benevolent influence of the ordinary incentives to industry and enterprise. The exhilarating effect of release from the onus of debt is thus described by Shakespeare:

> And when the mind is quicken'd out of doubt,
> The organs, though defunct and dead before,
> Break up their drowsy grave, and newly move
> With casted slough, and fresh legerity.

On the other hand, this benign policy must not

be permitted to foster greater evils than unrelieved insolvency produces. The mode of relief should be elastic and graduated according to the comparative merits of the conduct of the debtors and the circumstances which lead to their insolvency. When obligations can be satisfied more easily than through toil and sacrifice, far less effort to make honest payments is likely."

Noel continued, p. 191:

"In the absence of fraud or criminal negligence, the bankrupt although not guilty, is not wholly innocent, for the creditor has rights which must not be violated even if adversity be the cause of the bankrupt's condition. His claims are a part of his property, but his rights are partially offset by the paramount rights of the community. A private right must always give place to a general good. But this law also operates for the creditor's advantage, for if the insolvent debtor remain under the burden of debt, the fund will gradually be further diminished, perhaps depleted, while the creditor will procure nothing more except in the case of the conscientious man who, in any event, would make restitution. By relieving the debtor, the community is benefited by his experience, greater precaution and renewed industry. In spite of his misfortune a debtor continues to enjoy rights coequal with the creditor. Therefore the State is called upon to administer, differentiate and protect the rights of the debtor and those of the creditor.

God wills human society, but civil society can not be maintained without authority to protect and enforce the definite individual rights of those composing it in a manner conformable with the best interest of society at large. To do this is the first duty of the State. Its second duty is to determine and maintain indefinite rights. To accomplish these purposes the State has the right, by the natural law, to pass any positive law which really favors the common good by the protection of some private right. The norm of interference with private rights is the public good. The relation of the debtor and

the creditor is a relation of contract entered into with the fullest intention of the parties thereto to accomplish that which they promise. Is the authority of the State competent to interfere with the relation of contract, and if it is, to what extent can it absolve a debtor from his debts? According to what theologians call 'natural justice', the debtor owes the full amount which represents that which he has received, and he is obliged, *coram Deo*, to pay it. If he is unable to pay in full, assuming the equal circumstances of all the creditors, he should pay *pro rata* as much as he is physically able to spare. If afterwards he prosper and is in a position to pay the balance, he must do so. In this rule, in the absence of the general good, all the doctors agree. It is understood that in case the bankrupt does not become able to discharge the debt, he is not culpable, unless he assumed it knowing that he could not fulfill the obligation. Physical or moral incapacity will be a valid excuse as long as it lasts, for if he can not make restitution without reducing himself to beggary and those depending upon him to wretched circumstances, it will be sufficient if he have the desire to restore what belongs to his creditors.

For the common good, however, the State has authority to interpose and to set aside the rules of 'natural justice'. By virtue of this power bankruptcy laws have been established, which relieve the debtor who has complied with all the legal requirements and protect him against the courts and invocation of authority for the exaction of additional payments."

Noel partly concludes his great work in saying, p. 198:

"*We come now to a summarized consideration of the development of the Federal bankruptcy system. The origins of its numerous doctrines are found scattered over the civilized world throughout a period of twenty-five centuries. From a legal procedure adopted for the benefit of the creditors it has been transmuted into a commercial policy*

abounding with utility and profit alike for the debtors and the creditors of the entire community. It has been evolved in conformity with the exposition of William Penn, when he declared:

'We have (with reverence to God, and good conscience to Men) to the best of our Skill, contrived and composed the Frame and Laws of the Government, to the great End of all Government, viz., to support Power in Reference with the People; that they may be free by their just Obedience, and the Magistrates Honourable for their just administration; For Liberty without Obedience is Confusion, and Obedience without Liberty is Slavery. To carry this evenness is partly owing to the Constitution, and partly to the Magistracy; Where either of these fail, Government will be subject to convulsions; but where both are wanting, it must be totally subverted; Then where both meet, the Government is like to endure . . .'"

Finally Noel concludes his rather astounding work by saying, with respect to the bankruptcy laws, p. 200:

"The history of these laws is evidence of man's humanity to his fellow man. While all concede that as long as men barter, bankruptcy will be one of the evils of society, it is now regarded, not as a crime, but as a misfortune, not as a disgrace, but as a malady which needs the soothing remedy of sympathy and encouragement."

There are many unanswerable reasons applying at all times and in all conditions and stages of government which prove that such system should be a permanent part of the National legislation. In beholding the excellent laws for the relief of insoluble debt in the United States, a line in Franklin's farewell address to the Constitutional Convention recurs as applicable to this clause of that *Constitution* to which he referred. He said: 'It astounds me, sir, to find the system approaching so near to perfection as it does.'"

(Elliot, "*Debates*", V. 554.)

B.

THE CONSTITUTION CHARGES THE FEDERAL COURTS WITH VISION AND UNDERSTANDING. THEY ARE BOUND TO TAKE JUDICIAL NOTICE OF ECONOMIC CONDITIONS.

This nation was founded by farmers. It was organized by farmers. It has been defended by farmers. And farmers are still its backbone. If a large percentage of them are evicted from their homes, and their years of labor, and their life's savings lost, it will not be long before we will approach the condition so forcibly described by Judge Dick in his decision in, *In re Vogler*, Fed. Cas. No. 16,986, hereinafter referred to. It is amazing that these lienholders do not appreciate the terrific danger to the nation that they are helping to create. They ride the rapids, but neither hear the thunder of the falls, nor glimpse the jagged reefs between which their bark is plunging. They have not profited by the lessons of 1932, which were taught in the conservative Republican state of Iowa, as well as the so-called more radical states.

Nor the chaos of certain parts of Europe, largely induced by the ruthless and unseeing holders of securities. But privilege has ever been blind, inhuman and misunderstanding. The thinking and patriotic people of this country are not blind to the dangers that will result, if any successful effort is made to make peasants or peons out of such free born citizens as are petitioning this court for relief. And Congress sees the danger. And the Circuit Court of Appeals has seen the danger. Well did it say in its recent decision, February 11th, 1935, in this case (C. C. A. 6th Circuit):

> **"The public welfare sought to be conserved by the assailed legislation not only transcends the in-**

> terest of the class to be affected, but is rooted in the traditional policy of the United States to prevent the development of a great class of dependent tenant farmers comparable to the peasantry of European states. This policy was early reflected in the disposition of the public domain, the homestead laws, and the limitations written into the railroad land grants restricting sales in quantity and price and to actual settlers. Oregon & California R. R. v. U. S., 238 U. S. 393."

This Court cannot, and we know, will not, blind its eyes to the very serious condition that is confronting the nation today.

As we have irrefutably demonstrated by Government reports, agriculture has been going through a panic, not a depression, since 1921. Since that time farmers' incomes have been 50% of normal. It has taken Congress 13 years to afford to the farmer any opportunity to reorganize himself. But 3 years after a depression hit commerce, Congress afforded it relief. Congress did not wait 13 years to do so in the case of manufacturers, etc.

C.

JUDICIAL RECOGNITION OF "THE OUTSTANDING CONTEMPORARY FACT."

In *Atchison, Topeka & Santa Fe Railway Co. v. United States*, 284 U. S. 248, the Interstate Commerce Commission had entered an order reducing livestock rates, based on a record presented in 1928. In 1931 the carriers petitioned for re-opening of the case because of the change in economic conditions, which was denied by the Commission. The Supreme Court held that it was not only the duty of the Commission to take judicial notice of the change in conditions, but that it would do so itself. That the judicial branches of the

Federal government should keep themselves fully advised of the major economic changes, and must take judicial notice of them, This Court said, p. 260:

> "*There can be no question as to the change in conditions upon which the new hearing was asked. Of that change we may take judicial notice. It is the outstanding contemporary fact, dominating thought and action throughout the country.* * * * It is plain that a record which was closed in September, 1928—relating to rates on a major description of the traffic of the carriers in a vast territory—cannot be regarded as representative of the conditions existing in 1931. That record pertains to a *different economic era* and furnishes no adequate criterion of present requirements."

The case of *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, is a case which definitely supports the reasoning of the Court of Appeals of the Sixth Circuit in this case. It is a decision that was prophetic of the *Gold Clause cases*. It is a decision that might be termed emblematic of the safeguards that the Federal courts must continually erect, to protect the basis of American government from being wrecked by the die-hards of privilege. This is a country of free men, created, organized, supported and defended, throughout its entire history, primarily by freemen farmers. Thirty percent of the population of this country today live on farms that are operated by the head of the family. An overwhelming majority were owners. Today a large proportion of them own them no longer. What percentage no authoritative figures are available as yet. But coming to Benton County, of which counsel has some specific knowledge he can truly say, that at least 25 percent of the farms of that county have passed out of the hands of the farmers and into the ownership of large

corporations. The total acreage being somewhere in the neighborhood of 40,000 acres. At least another 20 percent are faced with foreclosure, or eviction because of various specious conveyances, such as "certificates of entry," that they have signed. The present economic condition is the result of the world wide cataclysm that has engulfed every class of society and spared no one. *Farmers certainly have neither caused it, nor contributed to it. In fact, the industry and honesty of the farmer is proverbial. The court will take judicial notice of the fact, that for practically the last three quarters of a century, which has witnessed the growth of large interests with funds to invest, farm mortgages have been considered the safest investment that could possibly be made, outside of the securities of the national government.* Various steps have been devised to cope with the present extraordinary conditions. Some, as the court well knows, by the National government, some by the States. One of the latter remedies was under consideration by the Supreme Court of the United States in the *Blaisdell case*. There the legislature of Minnesota declared that a national emergency existed as the result of unusual economic conditions. That the existence of this emergency demanded the exercise of the police power of that State for the protection of the public, and to promote the general welfare of the people, by temporarily extending the time allowed by existing law for redeeming real property from foreclosure and sale under existing mortgages. In support of this proposition it recited that "a severe financial and economic depression has existed for several years, resulting in extremely low prices for the products of farms and factories, in much unemployment, in almost complete lack of credit for farmers, business men and property owners, and in

extreme stagnation of business, agriculture and industry; that many owners of real property, by reason of these conditions, are unable and, it is believed, for some time will be unable, to meet all payments as they come due, of taxes, interest and principal of mortgages, and are, therefore, threatened with the loss of their property through foreclosure sale; that much property has been bid in on foreclosure for prices much below what it is believed was its real value, and often for much less than the mortgage indebtedness, resulting in deficiency judgments; that, under the existing conditions, foreclosure of many real estate mortgages by advertisements would prevent fair, open and competitive bidding in the manner contemplated by law."

On an application by a mortgagor to take advantage of the Moratorium Act, it was contended that the legislature had no right to recite the facts of the emergency, and could not by such recital buttress an undue extension of the police power of the State. Furthermore, that the legislation impaired the validity of contracts in violation of the 14th Amendment. An objection that cannot be made with respect to similar legislation by Congress.

The Supreme Court held that it was the duty of the legislature and courts to take notice of conditions that involve the welfare of the nation or of the different states. That it was the duty of the Federal courts to strengthen the hands of the legislature, when it was extended to grasp a power which it had, but which had been permitted to lie dormant. That the mere failure to use a weapon was no indication that it was not already in the arsenal. The Supreme Court held the law constitutional.

We wish to call to the attention of the court some

of its language. On page 422 it quoted with approval the language from the Supreme Court of Minnesota, upholding that Act, in which that court said, p. 422:

> "'In addition to the weight to be given the determination of the legislature that an economic emergency exists which demands relief, the court must take notice of other considerations. The members of the legislature come from every community of the state and from all the walks of life. They are familiar with conditions generally in every calling, occupation, profession, and business in the state. Not only they, but the courts must be guided by what is common knowledge. It is common knowledge that in the last few years land values have shrunk enormously. Loans made a few years ago upon the basis of the then going values cannot possibly be replaced on the basis of present values. We all know that when this law was enacted the large financial companies, which had made it their business to invest in mortgages, had ceased to do so. No bank would directly or indirectly loan on real estate mortgages. Life insurance companies, large investors in such mortgages, had even declared a moratorium as to the loan provisions of their policy contracts. The President had closed banks temporarily. The Congress, in addition, to many extraordinary measure looking to the relief of the economic emergency, had passed an act to supply funds whereby mortgagors may be able within a reasonable time to refinance their mortgages or redeem from sales where the redemption has not expired. With this knowledge the court cannot well hold that the legislature had no basis in fact for the conclusiin that an economic emergency existed which called for the exercise of the police power to grant relief.'" "189 Minn. 429; 249 N. W. 336."

Then this court quoted with approval the language of the concurring Justice of the Supreme Court, Justice Olsen, who said, p. 423:

"'The present nation wide and world wide business and financial crisis has the same results as if it were caused by flood, earthquake, or disturbance in nature. It has deprived millions of persons in this nation of their employment and means of earning a living for themselves and their families; it has destroyed the value of and the income from all property on which thousands of people depended for a living; it actually has resulted in the loss of their homes by a number of our people and threatens to result in the loss of their homes by many other people, in this state; it has resulted in such widespread want and suffering among our people that private, state, and municipal agencies are unable to adequately relieve the want and suffering, and Congress has found it necessary to step in and attempt to remedy the situation by federal aid. Millions of the people's money were and are yet tied up in closed banks and in business enterprises.'"

The Supreme Court said, p. 425:

"Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system. While emergency does not create power, emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.' *Wilson* v. *New*, 243 U. S. 332, 348. The constitutional question presented in the light of an emergency is whether the power possessed embraces

the particular exercise of it in response to particular conditions. Thus, the war power of the Federal Government is not created by the emergency of war, but it is a power given to meet that emergency. It is a power to wage war successfully, and thus it permits the harnessing of the entire energies of the people in a supreme cooperative effort to preserve the nation."

And in explaining that the Constitution should not be given a narrow construction, the court said, p. 426:

"But where constitutional grants and limitations of power are set forth in general clauses, which afford a broad outline, the process of construction is essential to fill in the details. That is true of the contract clause. The necessity of construction is not obviated by the fact that the contract clause is associated in the same section with other and more specific prohibitions. Even the grouping of subjects in the same clause may not require the same application to each of the subjects, regardless of differences in their nature. See *Groves* v. *Slaughter*, 15 Pet. 449, 505; *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 434."

The court continued, p. 434:

"Not only is the constitutional provision qualified by the measure of control which the State retains over remedial processes, but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.' *Stephenson* v. *Binford*, 287 U. S. 251, 276. **Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,**

—a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residium of state power has had progressive recognition in the decisions of this Court."

This court said, p. 439:

> "The preservation of state power appropriate to such extraordinary conditions may be deemed to be as much a part of all contracts, as is the reservation of state power to protect the public interest in the other situations to which we have referred. And if state power exists to give temporary relief from the enforcement of contracts in the presence of disasters due to physical causes such as fire, flood or earthquake, that power cannot be said to be non-existent when the urgent public need demanding such relief is produced by other and economic causes."

If this is true with respect to the power of the States to act, how much broader is the power of Congress to act for the national welfare! And the court said, p. 442:

> "*It is manifest from this review of our decisions that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The settlement and subsequent contraction of the public domain, the pressure of a constantly increasing density of population, the interrelation of the activities of our people and the complexity of our economic interests, have inevitably led to an increased use of the organization of society in order to protect the very bases of individual opportunity. Where, in earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the State itself were touched only remotely, it has later been found that the fundamental interests of the*

State are directly affected; and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends. It is no answer to say that this public need was not apprehended a century ago, or to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means to-day, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning 'We must never forget that it is a *constitution* we are expounding' (M'Culloch v. Maryland, 4 Wheat. 316, 407) 'a constitution intended to endure for ages to come and consequently to be adapted to the various crises of human affairs.' *Id.* p. 415. When we are dealing with the words of the Constitution, said this Court in *Missouri* v. *Holland*, 252 U. S. 416, 433, 'we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. . . . The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.' Nor is it helpful to attempt to draw a fine distinction between the intended meaning of the words of the Constitution and their intended application. When we consider the contract clause and the decisions which have expounded it in harmony with the essential reserved power of the States to protect the security of their peoples, we find no warrant for the conclusion that the clause has been warped by these decisions from its proper significance or that the founders of our Government would have interpreted the clause differently had they had occasion to assume that responsibility in the conditions of the later day.

The vast body of law which has been developed was unknown to the fathers, but it is believed to have preserved the essential content and the spirit of the Constitution. With a growing recognition of public needs and the relation of individual right to public security, the court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the States to protect their fundamental interests. This development is a growth from the seeds which the fathers planted. It is a development foreseen by the prophetic words of Justice Johnson in *Ogden v. Saunders*, already quoted. And the germs of the later decisions are found in the early cases of the *Charles River Bridge* and the *West River Bridge*, *supra*, which upheld the public right against strong insistence upon the contract clause. The principle of this development is, as we have seen, that the reservation of the reasonable exercise of the protective power of the State is read into all contracts and there is no greater reason for refusing to apply this principle to Minnesota mortgages than to New York leases."

And the Supreme Court in holding that it must not close its eyes to the situation existing said, p. 444:

"Applying the criteria established by our decisions we conclude:

1. An emergency existed in Minnesota which furnished a proper occasion for the exercise of the reserved power of the State to protect the vital interests of the community. The declarations of the existence of this emergency by the legislature and by the Supreme Court of Minnesota cannot be regarded as a subterfuge or as lacking in adequate basis. *Block v. Hirsh*, *supra*. The finding of the legislature and state court has support in the facts of which we take judicial notice. *Atchison, T. & S. F. Ry. Co. v. United States*, 284 U. S. 248, 260. It is futile to attempt to make a comparative estimate of the seriousness of the emergency shown in the leasing cases from New York and of the emergency

disclosed here. The particular facts differ, but that there were in Minnesota conditions urgently demanding relief, if power existed to give it, is beyond cavil. As the Supreme Court of Minnesota said, the economic emergency which threatened 'the loss of homes and lands which furnish those in possession the necessary shelter and means of subsistence' was a 'potent cause' for the enactment of the statute.

2. The legislation was addressed to a legitimate end, that is, the legislation was not for the mere advantage of particular individuals, but for the protection of a basic interest of society.

3. In view of the nature of the contracts in question mortgages of unquestionable validity the relief afforded and justified by the emergency, in order not to contravene the constitutional provision, could only be of a character appropriate to that emergency and could be granted only upon reasonable conditions.''

And in reverting to the fact that the ''basic interest'' of society was involved, the Supreme Court said, p. 445:

''Also important is the fact that mortgagees, as is shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies. These, and such individual mortgagees as are small investors, are not seeking homes or the opportunity to engage in farming. Their chief concern is the reasonable protection of their investment security. It does not matter that there are, or may be, individual cases of another aspect. The legislature was entitled to deal with the general or typical situation. The relief afforded by the statute has regard to the interest of mortgagees as well as to the interest of mortgagors. The legislation seeks to prevent the impending ruin of both by a considerate measure of relief.''

With regard to the argument that by extending the equity of redemption the court was depriving the mortgage holders of a property right, in that they were kept out of possession of the property if a sale had been had, the Supreme Court said, p. 446:

> "In the absence of legislation, courts of equity have exercised jurisdiction in suits for the foreclosure of mortgages to fix the time and terms of sale and to refuse to confirm sales upon equitable grounds where they were found to be unfair or inadequacy of price was so gross as to shock the conscience. The 'equity of redemption' is the creature of equity. While courts of equity could not alter the legal effect of the forfeiture of the estate at common law on breach of condition, they succeeded, operating on the conscience of the mortgagee, in maintaining that it was unreasonable that he should retain for his own benefit what was intended as a mere security; that the breach of condition was in the nature of a penalty, which ought to be relieved against, and that the mortgagor had an equity to redeem on payment of principal, interest and costs, notwithstanding the forfeiture at law. This principle of equity was victorious against the strong opposition of the common law judges, who thought that by 'the Growth of Equity on Equity the Heart of the Common Law is eaten out.' The equitable principle became firmly established and its application could not be frustrated even by the engagement of the debtor entered into at the time of the mortgage, the courts applying the equitable maxim 'once a mortgage, always a mortgage, and nothing but a mortgage.' Although the courts would have no authority to alter a statutory period of redemption, the legislation in question permits the courts to extend that period, within limits and upon equitable terms, thus providing a procedure and relief which are cognate to the historic exercise of the equitable jurisdiction. If it be determined, as it must be, that the contract clause is not an absolute and utterly unqualified restriction of the State's protective power,

this legislation is clearly so reasonable as to be within the legislative competency."

And finally the court summarily disposed of the argument that the legislation was unfair and was unwise by stating that that was no concern of the court, but was a matter entirely within the discretion and province of the legislative authority, saying, p. 447:

> **"Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned."**

It is against the American scheme of government to permit corporations to acquire large tracts of farming land and evict therefrom their farmer owners. Especially is this true, when it appears that such a portion of the population has literally beggared itself to meet its payments under the mortgages, and has turned over to creditors practically everything of which it was possessed. Thus it will have nothing left, except some $600.00 in exemptions, (Indiana) and which in these present days, puts such a class of freemen in a condition worse than what the peasants of Europe labor under. At least that class if it has little property, has little responsibility. The legislation is not as drastic as might have been imposed. For instance, in Poland, which has a constitution modeled after the American Constitution, the legislature has reduced the interest rate on farm mortgages to 2 percent, and extended them for 50 years. Some such provision as that may yet be necessary here, because it is becoming increasingly evident to all thoughtful people, and students of the present world travail, that until that which is being born, is spewed forth, and evaluated, that no man can truly say what the future holds. And it is neither

patriotism nor good common sense to attempt to enslave a substantial portion of the population. And it is becoming more and more apparent, that this depression will not end in the five years, that Congress evidently thought it would.

In re Radford, 8 Fed. Supp. 489, the district court said, in this case, p. 499:

> "Courts may take judicial notice of universally recognized facts. At the time this legislation was enacted, the nation was going through the severest financial depression in its entire history. Values of all property, and particularly of farm property, had not only sunk to unprecedented levels, but there was no market for it even at these levels. In legislating on matters committed to it by the Constitution, Congress undoubtedly may give thought to public policy and the general welfare. Within the scope of its delegated powers it may legislate for the general welfare, just as states may do under their police power."

The court continued, p. 499:

> *"Unquestionably, it is desirable that the sacrifice of farm property and the dispossession of farmers shall be avoided, so far as constitutionally may be done with fairness to others, during an emergency such as now prevails. It was the judgment of Congress that through the medium of bankruptcy proceedings the farmer should be given five years within which to rehabilitate himself and save his property. Discretion on this subject, within constitutional bounds, rests with Congress, and I am not prepared to say that these bounds have been exceeded in the legislation under consideration."*

Also see:

> *In re Cope*, 8 Fed. Supp. 778, referring to the emergency declared by Congress to exist, by Section 78 of the Bankruptcy Act.

Paine v. Capital Freehold & Land Co., 8 Fed. Supp. 500.

I.

SECTION 75 (8) IS A REMEDIAL LAW AND AS SUCH TO BE LIBERALLY CONSTRUED TO EFFECT ITS PURPOSE

In the great case of *In re Chicago, R. I. & P. Ry. Co.*, 72 Fed. (2nd) 443, now before this court, the Circuit Court of Appeals of this district, in holding Section 77 constitutional and discussing its effect, laid stress upon the fact that it was the duty of the United States Courts to effectuate the intention of Congress. Section 77 does for a railroad what Section 75 does for a farmer, and the language used by the Court of Appeals is apt to the case involved here. The court said, p. 450:

> "Upon the authority expressly granted by the Constitution to Congress (article I, Sec. 8), that body is authorized to enact such bankruptcy legislation as it may deem wise and appropriate. The constitutional grant of authority is not conditional nor limited, save that its laws be uniform throughout the United States. If the Congress divides debtors, into classes such as farmers, corporations, individuals, railroads, etc., it is acting within its powers. It is not for the courts to brush aside such classification on the ground that there is not sufficient justification in fact therefor."

Then the court in discussing the necessities of railroads continued, p. 450:

> **"Congress, having the express authority to enact legislation on the subject matter of bankruptcy, was the sole judge of the means and their appropriateness to the purpose of the legislation so long as said means did no violence to the provisions of the Constitution.** It required no investigation by Congress to show that the railroad companies

occupied a distinct and unique position and were the legitimate subject of special provisions of the Bankruptcy Act. The necessity of continuing the operation of the railroad, the impracticability of liquidating its assets through the usual methods adopted in courts of bankruptcy, the futility of selling divisions or subdivisions of railroads or of rolling stock, etc., all unite to furnish a basis in fact for a classification of debtors which singled out railroad corporations and provided specially and specifically for their administration by the Court."

We may well paraphrase this reasoning of the Court of Appeals of this Circuit by applying it to farmers. And as the Court of Appeals of the Sixth Circuit pointed out a month or so ago, in holding the Frazier-Lemke Act constitutional, that one purpose of this law was to prevent the lien holders from acquiring the land, and thus assist in building up a large peasant class of the character that is known in Europe. *That one of the fundamental policies of American government is to keep the farmer on his own farm.* In discussing the duty of a Federal court to effectuate the purposes of Congress, the court said, p. 451:

"Surely, we are justified in giving to the amendment a liberal construction, one that is consonant with the purposes of this remedial legislation. That which distinguishes this section from the old act—the gist of the change evidenced by this amendment, that which makes it effective—is the provision which calls for a *plan of reorganization.* It calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced) so that the debtor may live and the creditors will receive more than is obtainable upon a liquidation sale. The consummation of a fair and equitable plan of reorganiaztion is the goal of the legislation. How could a

> plan of reorganization be perfected unless the courts restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?"

This court is not oblivious to the practical situation confronting the country. It must take judicial notice of the fact as shown by the government reports, some of which are attached hereto, that ten millions of acres of farm lands, the finest and most fertile in the nation, have passed into the grasp of a few large corporations. A policy, interentially condemned by this Court in the *Blaisdell* Case. As the Court of Appeals well said in this case, p. 449:

> "We desire to direct our attention to the statute as amended to the condition that confronts us, not to a theoretical or suppositious question."

The case of *In re Landquist*, 70 Fed. (2nd) 929, recently decided by the Court of Appeals of the 7th Circuit, held Section 74 constitutional, which is part of a series of amendments, of which Section 75 is one. In that opinion the court discusses the construction that should be given to legislation of this kind, and says very clearly that Congress is the sole judge of the proper means to meet present conditions and can enact such legislation as it desires under Section 8 of the Constitution, provided such legislation is uniform. With reference to the power to pass such legislation, which is important, in order to evaluate the question presented, the court said, p. 931:

> "The Bankruptcy Act of 1898, of which the enactment of 1933 is an amendment, expressly recognized this principle. 11 USCA Secs. 1 and 21; In re Hargadine-McKittrick Dry Goods Co. (D. C.) 239 F. 155 (reversed on other points (C. C. A.)

244 F. 719); In re Foster Paint & Varnish Co. (D. C.) 210 F. 652. It is clear that appellees at the time of filing their petition were bankrupts within the meaning of the law, and that Congress was empowered by the Constitution to enact such bankruptcy legislation as it might deem proper for the benefit and relief of all persons so situated and their creditors, providing the enactments were uniform throughout the United States."

In discussing the proposition that Congress was the sole judge of the means to carry into effect its Constitutional powers, the court said p. 932:

"In making laws necessary and proper to carry into execution the powers vested by the Constitution, Congress possess the choice of means and may use any which are in fact conductive to the exercise of such powers. In the Matter of Edward Klein, 1 How. (42 U. S.) 277 (opinion by Mr. Justice Catron sitting as a Circuit Judge). See, also, United States v. Fisher, 2 Cranch (6 U. S.) 358, 2 L. Ed. 304; McCulloch v. Maryland 4 Wheat. (17 U. S.) 316, 4 L. Ed. 579; Legal Tender Cases, 12 Wall. (79 U. S.) 457, 20 L. Ed. 287. In Sturgis v. Crowinshield, 4 Wheat. 122, 195, 4 L. Ed. 529, Chief Justice Marshall, speaking of the scope of power granted by the 8th section of article 1 of the Constitution, said, 'The bankrupt law is said to grow out of the exigencies of commerce, and to be applicable solely to traders; but it is not easy to say who must be excluded from, or may be included within, this description. It is, like every other part of the subject, one on which the Legislature may exercise an extensive discretion.'"

The bankruptcy law should receive the interpretation which will effectuate its beneficent purposes.

Smith v. *Smith*, 7 Fed. Supp. 490.

The Frazier-Lemke Act merely affords to the farmer

a "long chance" to reorganize himself. He is afforded no such opportunity as is any other class covered by the bankruptcy law. Industrial corporations, railroad corporations, municipal corporations, and other individuals, may go into bankruptcy and either scale down their indebtedness, *including liens*, or repurchase their property for 75 percent or less of its appraised value.

Section 70 (b) of the Bankruptcy Act provides that if property is sold for less than 75 percent of its appraised value it should only be sold by express order of court. This section has been construed to mean that the trustee may sell property for 75 percent or more of its appraised value without an express order of court.

But in the case of the farmer he has to pay 100 percent of the appraised value, and subsequently he may be charged even more, perhaps even double, the original appraised value, and there is no other class covered by the Bankruptcy Act that is placed in this position.

It must be admitted that the purpose of this law is to keep the farmer on his farm. And hence every procedure, every order, that is taken under this law must be tested by that one standard. *Will the effect of such order tend to keep this farmer on his farm?* This is "farm" legislation that is being considered here. Farm relief legislation. And every doubt that there may be should be resolved in favor of the farmer.

2.

THE PLAIN MANDATE OF THE LAW CANNOT BE SET ASIDE BECAUSE OF CONSIDERATIONS WHICH APPEAL TO JUDGE OR REFEREE.

In Burton Coal Co. v. Franklin Coal Co., 67 Fed. (2d) 796, the court said, p. 797:

"Some question is raised as to the equity jurisdiction of the bankruptcy court. That it is a court of equity in the sense that 'its judge and referees, in adjudging the rights of parties entitled to their decision, are governed by the principles and rules of equity jurisprudence,' is beyond question. Larson et al. v. First State Bank of Vienna, S. D., et al. (C. C. A. 8) 21 F. (2d) 936; In re Rochford (C. C. A. 8) 124 F. 182; In re Ben Boldt, Jr., Floral Co. (C. C. A. 10) 37 F. (2d) 499. It has not, however, plenary jurisdiction in equity, but it confined, in the application of the rules and principles of equity, to the jurisdiction conferred upon it by the provisions of the Bankruptcy Act, reasonably interpreted. Johnson v. Norris (C. C. A. 5) 190 F. 459, L. R. A. 1915B, 884; In re Kane (C. C. A.) 127 F. 552. ((3,4)) *The plain mandate of the law cannot be set aside because of considerations which may appeal to referee or judge as falling within general principles of equity jurisprudence.* It must be conceded that a bankruptcy court having a fund in its custody, coming to it in the course of its administration of the bankruptcy estate, has exclusive power to make just disposition thereof. In re Antigo Screen Door Co. (C. C. A. 7) 123 F. 249; In re Rochford (C. C. A. 8) 124 F. 182; In re Goss (D. C.) 43 F. (2d) 746; Berl v. Gruther (C. C. A. 5) 60 F. (2d) 440; Murphy v. John Hofman Co., 211 U. S. 562, 29 S. Ct. 154, 53 L. Ed. 327."

Also see:

Home Bldg. & L. Ass'n v. *Blaisdell*, 290 U. S. 398.

Norman v. *B. & O. R. Co.*, 55 Sup. Ct. Rep. 407, 417.

In some of the decisions rendered by courts of rather limited vision, we see a certain misunderstanding at what they regard as revolutionary legislation. Well may it be so regarded. For it is intended as insurance that this country shall not lose the inalienable rights

of life, liberty and happiness for which its sons have fought, died, and risked their all, for a century and a half. Such courts do not see that the world is in labor. And what is to be born no one alive can tell. But it is to prevent any such hideous perversion of government as has overtaken a portion of the world, that Congress is frantically endeavoring to restore economic peace and security to this nation. By farm legislation Congress is patriotically trying to protect the theory of American government, to safeguard American liberty, by preventing the aquisition of huge tracts of farming land by a few greedy creditors, blindly absorbed in the pursuit of a sordid profit.

Perhaps these courts were not awake to the dangers. Perhaps their environment or lack of knowledge, is accountable for decisions, which can be explained on no other basis.

Unquestionably had these courts seen the terrible conditions, the unheard of problems confronting farmers gengrally, they could not possibly have spoken as they did. Were they advised of the lack of consideration shown to this industrious, honest and hard working portion of our population, by a "few greedy creditors," the unreasoning treachery displayed towards the weak by the strong, the assertion might safely be ventured that they would want their hands to wither before ever they would have penned the decisions they did.

Here the Court is asked to note what two judges of vision have stated concerning the present emergency. These decisions have been selected because they come from two parts of the country as far apart as the poles. One comes from the citadel of Croesus, the City of New York. And the other is rendered by a judge sitting

in the Lone Star State, 3,000 miles away. But their vision is the same, and they see eye to eye. As the Supreme Court of New York said in *Chemical Bank and Trust Company v. Adam Schumann Associates*, 288 N. Y. S. 674, p. 676:

"It seems almost superfluous to call some recent happenings to mind. Ten months ago every bank in the land was closed and a lamentable number of them have never since reopened. Substantially all of the mortgage guaranty companies in the state are being wound up, or, stated less bluntly, 'rehabilitated,' and thus a great industry, the backbone of building, as well as of conservation and thrift, is in ruins. The insurance companies, savings banks, and trust estates, formerly generous providers of mortgage money, are literally surfeited with holdings of real estate through foreclosure or default. The Legislatures of various states, including our own, have declared the existence of a public emergency and enacted laws designed to relieve helpless debtors. The federal government, through sheer necessity, has embarked upon a tremendous lending program in an effort to save the homes and farms of the distressed. Banks have largely abandoned their time-honored function of accomodating the worthy borrower and, instead, pride themselves upon their liquidity, refuse to pay interest on deposits, and bring forward fatuous schemes of charging depositors for safeguarding and using their funds. Possession of the very gold with which this judgment debtor doubtless covenanted to pay her obligations is now declared a crime. Every day at the real estate exchange witnesses the solemn, but costly, farce of offering dozens of parcels of valuable realty, which go to the respective mortgagees without a single competing bid.

"It was into this maelstrom of economic forces that Margaret Ferguson was plunged through the default of her grantee and the consequent election of the plaintiffs to call their loan. The law presumes that a wideawake debtor, will, under

such circumstances, apply to and obtain from another lender, equivalent accomodation and thus protect herself against a possible deficiency judgment. Such a presumption is well enough in normal times, but it has no proper place in a topsy turvy period like the present. In truth and in fact, mortgage money is, and for some moths has been, practically unobtainable, and one need do no more than compare the day-to-day record of mortgage transactions with those of a year or two ago, to satisfy himself on that point."

Great nations have been unable to pay their debts. The British Empire in its note to our state department, June 1, 1934, confessing its inability to meet its obligations, said:

"* * * * it was found impossible to arrive at a settlement acceptable to the two governments in face of the unprecedented state of world economic and financial conditions."

And thus United States Judge Atwell, of Texas, in holding section 75 constitutional, said in *Paine v. Capitol Freehold Land & Trust Co.*, 8 Fed. Supp. 500, p. 501:

"A trial court who sits in this portion of the state, where for several successive seasons the whole face of the earth has been blighted by drouth, is forced to view with complacency almost any effort for the relief of those who depend upon the fruit of the soil for livelihood. Likewise the mind of the judge must be open for the appropriate reception and careful study of any properly fathered effort for the relief of the present situation."

And it is in that frame of mind that every patriotic citizen, every person who has sincerely at heart the good of his country, the good of his fellowmen, must evaluate all emergency legislation.

3.

THE PURPOSE OF SECTION 75 IS TO KEEP THE FARMER ON HIS FARM.

As the Circuit Court of Appeals of the Sixth Circuit has so recently pointed out, the theory underlying this government is to promote the ownership of farms by individual farmers. Our policy of government is opposed to any such condition as will tend to create a peasant class such as exists in Europe, or to transform our farmer owners into farm laborers, working on a small monthly wage.

Now how can that be accomplished by the present legislation? It can only be done with the assistance of the courts, thoroughly imbued with the theory of American government, thoroughly learned in the decisions rendered by those masters of the law who have construed the acts of Congress through the years.

The problem before the court is one of the utmost gravity, to many persons faced with disaster, and vital to the well being of the nation.

Congress might have wiped out the secured creditor's lien had it elected to do so. (Of course, the Fifth Amendment would prevent cancellation of the obligation, unless under circumstances such as at the present time are not apparent to this generation). Judge Dick of North Carolina, in the widely cited case of *in re* Jordan, Fed. Case No. 7514; 13 Fed. Cas. p. 1077, said, p. 1080:

> "Congress certainly has the plenary and paramount power, save the restriction above considered, to pass bankrupt laws which will not only impair the obligation of contracts, but entirely discharge the debtor from such obligations, no matter when or where contracted. *Congress, also, has the power*

in establishing a uniform system of bankruptcy to do away with the effects of liens created by the judgments of any court. If a judgment can be discharged by a bankrupt law there is no reason why a lien which is an incident to a judgment can not also be discharged."

And the learned judge also said, p. 1080:

"*The power expressly conferred upon Congress to enact uniform bankrupt laws, is necessarily an express power to do away entirely with contracts, as such a result is the very object and essence of bankrupt laws. But it is insisted that while Congress may have this paramount power over contracts, it exceeds its authority in enacting that state exemptions shall be 'valid against liens by judgment or decree of any state courts.' This is equivalent to saying that the contract may be impaired, but the remedy must not be interfered with —the principal may be destroyed, but the incident is protected against legislative action. There is nothing in the nature of liens why they should be thus specially protected, as they are not vested rights; but there are strong reasons why they should not be recognized and enforced by bankrupt laws. The enforcement of liens is certainly contrary to the policy of a general system of bankruptcy, the object of which is to distribute the estate of an insolvent debtor among all of his creditors, upon the principle that equality is equity. Liens, upon general principles, certainly deserve no special favor and protection in bankrupt laws. The bankrupt act, before the amendment of March 3, 1873, in express terms avoids liens valid under state laws and created by the levy of an attachment within four months before the commencement of proceedings in bankruptcy, and this action of Congress is generally conceded to be constitutional. Congress has even interfered with vested rights, for by the thirty-fifth section of the bankrupt act, assignments and conveyances made under certain circumstances are avoided, although such assignments and conveyances are valid at common law*

and under the laws of the state, and the parties have acquired a complete title and possession of the property conveyed. I have a very decided opinion that Congress did not exceed the limits of its constitutional powers in enacting the act of March 3, 1873. **I also think that Congress, under its general powers over the subject of bankruptcy could avoid all liens, whether existing by statute, by usage, by express contract, or at common law."**

It did not do so, although well it might under the express grant of power given it in Section Eight, Article I, of the Constitution. As the Supreme Court has just said in the *Gold Clause Cases*:

> "There is no constitutional ground for denying to Congress the power expressly to prohibit and invalidate contracts, although previously made and valid when made, when they interfere with the carrying out of the policy it is free to adopt."

4.

INTEREST ON A SECURED CLAIM STOPS WITH THE FILING OF THE PETITION IN BANKRUPTCY.

In *Sexton v. Dreyfus*, 219 U. S. 339, the Supreme Court in definitely deciding that interest on a secured claim stopped with the filing of the petition, said p. 344:

> "For more than a century and a half the theory of the English bankrupt system has been that everything stops at a certain date. Interest was not computed beyond the date of the commission. Exparte Bennet, 2 Atk. 527. This rule was applied to mortgages as well as to unsecured debts; Ex Parte Wardell, 1787; Ex Parte Hercy, 1792, 1 Cooke, Bankrupt Laws, 4th ed; 181; (1st ed., Appendix), and notwithstanding occasional doubts it has been so applied with the prevailing assent of the English judges ever since. Ex Parte Badger,

4 Ves. 165. Ex Parte Ramsbottom, 2 Mont & Ayrt. 79. Ex Parte Penfold, 4 De G. & Sm. 282. Ex Parte Lubbock, 9 Jur. N. S. 854. In re Sawin, 1 R. & Ch. 700, 704. Ex Parte Bath, 22 Ch. Div. 430, 434. Quartermaine's Case ((1892)), 1 Ch. 639. In re Bonnetou, 1 Manson, 59. As appears from Clarke, supra, the rule was laid down not because of the words of the statute but as a fundamental principle. We take our bankruptcy system from England, and we naturally assume that the fundamental principles upon which it was administered were adopted by us when we copied the system, somewhat as the established construction of a law goes with the words where they are copied by another State. No one doubts that interest on unsecured debts stops. See Sec. 63 (1). Board of County Commissioners v. Hurley, 169 Fed. Rep. 90, 91. The rule is not unreasonable when closely considered. It simply fixes the moment when the affairs of the bankrupt are supposed to be wound up. If, as in a well known illustration of Chief Justice Shaw's, Parks v. Boston, 15 Pick. 198, 208, the whole matter could be settled in a day by a pre-probate court, the secured creditor would be called upon to sell or have his security valued on the spot, would reserve a dividend upon that foot ing, would suffer no injustice, and ought not complain. If, under Sec. 57 of the present act, the value of the security should be determined by agreement or arbitration the time for fixing it naturally would be the date of the petition. At that moment the creditors acquire a right in rem against the assets. Chemical National Bank v. Armstrong, 32 Fed. Rep. 377, 378, 379. Merrill v. National Bank of Jacksonville, 173 U. S. 131, 141."

For a similar decision in the Circuit Court of Appeals of the 7th Circuit see *In re Chandler*, 181 Fed. 887. In that case the court said, p. 889:

"As a provable debt that is, as a debt within the scope of the bankruptcy act the note was limit

ed to the principal and the interest thereon that would have been recoverable at the time of the filing of the petition in bankruptcy. The only other reference to interest is in section 63a (5), wherein authority is given for the allowance of provable debts reduced to judgments after the filing of the petition in bankruptcy, 'less costs incurred and interests accrued after the filing of the petition, and up to the time of the entry of such judgments.' This requirement, like the stopping of interest and the relating of unearned interest under section 63a (1), shows the legislative intent that all creditors having the right to share in the distribution of the bankrupt's property should be placed on an equal footing as of the date of the filing of the petition."

The court continued, p. 889:

"No precedents under the present act have been adduced by counsel or found by us. But our holding accords with interpretations of similar provisions of the act of 1867 and of the English acts. *In re Orne*, Fed. Cas. No. 10,581; *In re Hooke*, Fed. Cas. No. 6,803; *Thomas v. Mead*, 77 Mass. (10 Gray) 263; *Ex Parte Reese*, 9 Ves. Jr. 588."

The old case of *In re Orne*, Fed. Cas. No. 10,581, 18 Fed. Cas. 821, is to the same effect.

In that case District Judge Blatchford said, p. 822:

"The time of the adjudication of bankruptcy is taken, by the statute, as the decisive time. The debt must exist at that time or it cannot be proved. If it is created afterwards it cannot be proved.

It is equally clear that, where the debt is one, not only in existence at the time of the adjudication of bankruptcy, but payable before that time, and running with interest, by its terms or character, so that the obligation of the debtor in regard to the debt will not be wholly discharged without payment of such interest as well as the

> principal, the statute intends that the debt shall be proved for the amount of the principal and of the interest thereon to the time of the adjudication of bankruptcy."

It will be noted however, that while the learned judge there took the date of adjudication as the date which "stopped everything", the Supreme Court takes the date of the filing of the petition. In this connection it might not be amiss to point out that section 75 provides that the filing of the petition shall have the same effect as if an adjudication in bankruptcy had been entered against the debtor. However, since the decision of the Supreme Court in *Sexton* v. *Dreyfus*, 219 U. S. 339, the date of filing the petition controls.

In re J. & S. Ferguson & Lyle, 267 Fed. 817.

In the case of *In re Vogler*, decided in 1873, Fed. Case No. 16,986, 28 Fed. Cas. p. 1248, the court said, p. 1252:

> *"The assignee is an officer of the court and the title of the property is conveyed to him by the court for the more convenient collection and distribution of the assets according to the purposes and provisions of the statute. The assignee has no individual interest in the property, and his title in no way affects the equitable rights of other persons; but he holds as a custodian of the law, until the court ascertains the legal and equitable rights of persons interested in the assets and orders a distribution to be made. Until such time, creditors proving debts have no absolute vested rights, and the court, after adjusting liens, may make a disposition of the assets, according to the rights of parties, under laws existing at the time distribution is ordered."*

But under sub-division (7) a secured creditor will obtain interest. In this respect he is more fortunate

than secured creditors under sections 77 and 77B. There are many instances of proceedings under these laws, where the holders of first mortgages will not receive interest unless it is earned, and unless the court in its wisdom sees fit to permit them to have some. The railroads in reorganization, of which there comes to mind the Seaboard Air Line, has not paid interest on all its first mortgage bonds for some years. So likewise are the first mortgage bonds of the Chicago & Eastern Illinois in default, and also the Rock Island.

But, willy-nilly, the farmer starts paying interest within six months.

5.

THE "REASONABLE RENTAL" REFERRED TO IN SECTION 75 (s) (7) OF THE NATIONAL BANKRUPTCY ACT REQUIRES AN ACT OF JUDICIAL DETERMINATION, FROM ALL THE FACTS SUBMITTED BY ALL INTERESTED PARTIES.

The particular words used have received some judicial construction. Of course, it is self-evident that as used in Section 75 they can mean nothing more nor less than such a rental as will effectuate the intention of Congress.

The following cases are of interest.

In *State* v. *Vanderluis*, 42 Minn. 129, the court was called upon to construe what was 'reasonable" qualification regulations imposed by the legislature for the practice of dentistry. The discussion of the court of this term is almost classic. The court said, p. 131:

> "By the term "reasonable" we do not mean expedient, nor do we mean that the conditions must

be such as the court would impose if it were called on to prescribe what should be the conditions. They are to be deemed reasonable where, although perhaps not the wisest and best that might be adopted, they are fit and appropriate to the end in view, to wit, the protection of the public, and are manifestly adopted in good faith for that purpose."

In *Bennett* v. *Fuller*, 136 Wis. 193, the court was called on to state what was "reasonable" regulation of tenement-buildings. The court said, p. 202:

"There is no certain test by which what is reasonable in any given case can be definitely measured. It is a matter resting in human judgment. So the line between what is reasonable and what is not, marking the boundary of constitutional authority of the legislature, is one often difficult of ascertainment, rendering it very necessary, in all doubtful cases, for the judiciary to defer to the wisdom of the legislature."

The court continued, p. 203:

"It is said, 'that an attempt to give a specific meaning to the word "reasonable" is "trying to count what is not number, and measure what is not space."' *Ulsch[illegible]* v. *Coburn*, 38 Nebr. 881, 890, 57 N. W. 836, 838. It is not synonymous with 'expediency.' Matters of that sort are wholly for legislative cognizance. As applied to means to a legitimate end it suggests not necessarily the best or the only method, but one fairly appropriate at least under all the circumstances. In the ultimate, the scope of the term as regards any situation must be measured having regard to the fundamental principles of human liberty, as they were understood at the time of the formation of the constitution and were intended to be impregnably entrenched thereby, adapting the same, of course, to our modern conditions. Those principles have not changed in the years that have lapsed since the

constitution was formed. They are unchangeable and are of no less but rather of greater importance than they were when the framers of the Constitution attempted so carefully to guard them."

And the court went on to say, with reference to what was reasonable under the statute, that it should use common sense as applied to the whole situation, in deciding what was proper in view of the end to be attained.

The court continued, p. 203:

"In determining that, the court must look to the language of the statute and to all the facts bearing on the situation of which it may properly be said to judicially know because of their common nature or otherwise. *People ex rel. Kemmler* v. *Durston*, 119 N. Y. 569, 24 N. E. 6; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 8, 18 Sup. Ct. 757."

In *Rexroth* v. *Holloway*, 45 Ind. App. 36, the court was called upon to construe whether the hire of a horse by an agent was "reasonably incident" or "necessarily incident" to the performance of the principal's business. The logic of the court has some force here. The court said, p. 37:

"It is sometimes used to express that which is reasonable for the purpose required (*Mobile, etc., R. Co.*, v. *Alabama, etc., R. Co.* (1888), 87 Ala. 501, 6 South. 404; *In re Rhode Island, etc. R. Co.* (1901), 22 R. I. 457, 48 Atl. 590; *Mayor, etc.*, v. *Chesapeake, etc., Tel. Co.* (1901), 92 Md. 692, 48 Atl. 465), or that which is reasonably convenient under the circumstances (*Kelley* v. *People's Transportation Co.* (1870), 3 Ore. 189; *St. Louis, etc., R. Co.* v. *Trustees, etc.* (1867), 43 Ill., 303). It is sometimes given the meaning of that which is useful and suitable, or needful and conductive to or expedient or convenient, for the purpose required. *Board, etc.*, v. *Isenberg* (1900), 10 Okla.

378, 61 Pac. 1067; *Commissioners, etc.*, v. *Noesta* (1892), 91 Mich. 149, 51 N. W. 903; *Jerome* v. *Ross* (1828), 7 Johns, Ch. *315, 11 Am. Dec. 484; *Aurora, etc., R. Co.* v. *Harvey* (1899), 178 Ill. 477, 53 N. E. 331. There are cases which hold that the word 'necessary" means 'indispensably requisite,' 'inevitably' or 'not to be avoided.' *Lockwood* v. *Mildeberger* (1899), 159 N. Y. 181, 53 N. E. 803; *Town of Oldtown* v. *Dooley* (1876), 81 Ill. 255; *Hitch* v. *United States* (1895), 66 Fed. 937; *Stevenson* v. *State* (1885), 17 Tex. App. 618; *State, ex rel.*, v. *Mayor, etc.* (1894), 39 Nebr. 745, 58 N. W. 422; *English* v. *Reed*, (1895), 97 Ga. 477, 25 S. E. 325. But in the cases from different tribunals, giving these various definitions, there is little, if any, actual conflict, and from them it is made clear that the word 'necessary' must be considered in the connection in which it is used; that it is a word susceptible of various meanings, that it may import absolute physical necessity or inevitability, or that which is only convenient, useful, appropriate, suitable, proper or conductive to the end sought. *Mayor, etc.*, v. *Chesapeake, etc., Tel. Co., supra; McCulloch* v. *Maryland, supra.* 'Reasonable' is a term difficult of definition, and usually it must be considered with the facts of the particular controversy in determining its force and latitude. *In re Nice & Schreiber* (1903), 123 Fed. 987. It is sometimes used to express that which is appropriate and necessary (*Levering v. Union, etc., Ins. Co.* (1867), 42 Mo. 88, 97 Am. Dec. 320); it includes good faith and the exercise of a sound discretion (*Dearborn* v. *Batten* ((1888)), 64 N. H. 568), and it imports what is ordinarily or usual under the circumstances of the case. *Reed* v. *Missouri, etc., R. Co.* (1902), 94 Mo. App. 371, 68 S. W. 364; *Geno* v. *Fall Mountain Paper Co.* (1895), 68 Vt. 568, 35 Atl. 475."

So in the case presented here the "reasonable rental," which the court is called upon to fix must be such rental as will not merely tend to carry out the purpose of the law, but which actually will accomplish that pur-

pose, which is to keep the farmer on his farm.

What this rental shall be is a question for judicial determination. It must be decided by a United States court from a review of evidence that may be submitted by both the debtor and his creditors. All the circumstances of the case are to be taken into account.

But if as a matter of law, the secured creditor is not entitled to interest after a bankruptcy petition is filed, he can hardly complain of a law that gives him interest.

Railroads go into bankruptcy. Frequently secured creditors, even holders of first mortgages, do not receive interest for years. If our recollection is correct, there are several railroads in bankruptcy right today, such as the Seaboard Air Line and the Chicago and Eastern Illinois, that have not paid interest on their first mortgage bonds for quite a long period. Yet in the case of the farmer, he must start paying interest or rent within six months after his petition is acted upon.

X

IT IS NOT UNCONSTITUTIONAL TO SELL, OR LEASE BACK, TO THE FARMER, HIS OWN PROPERTY.

It is not intended to argue this proposition at any length. There has been made heretofore, what we believe is an adequate presentation of this proposition, insofar as legal precedent is concerned.

And yet, even these have little force when considered in the light of the fundamental safety of the nation that the Constitution intended should be the concern of this Court, for the ages to come. The preservation of the Republic is involved today just as critically as in 1776. True, the Hessians of finance are not clothed in the red coats of oppression, neither do they carry muskets.

But their purpose is just as ruthless and just as deadly, even though masked by the sweet smiles of courtesy and the docile demeanor necessary in a United States court room. If they succeed in their ill conceived, unpatriotic, and ill advised design, to acquire huge quantities of land at the expense of a large percentage of our farming population, they will break the back of the nation and cut its throat, and render it supine in the face of possible dangers, that are not remote. They will encourage the red flag of anarchy to wave in the cities, in the belief that the farmer, for a century and a half the conservative, stable, and dependable bulwark of this Republic, who founded it, defended it, and preserved it, has become unstabilized because of the elimination of his fortune, the deprivation of his home, the extinguishment of any opportunity to provide for his old age and the future of his children.

There are 23,000,000 persons on the relief roll of the country. It is said there is something like 11,000,000 former workers unemployed. The overwhelming majority of these are in the cities. It is there that starvation will first rear its ugly head. We wonder that those who are trying to evict the farmer, should be so narrow, as not to understand what a state of starvation really portends. What suffering in the large city really can be. One of the counsel in this case has been connected with the Emergency Relief Commission of Chicago. A report was made in the Winter of 1931, that there were 80,000 people in the city, who came out of their basements at night, and like rats, prowled the alleys, grubbing for food in the garbage cans. In the summer of 1931, he witnessed a riot in the alley in back of 10 South LaSalle Street, which his office overlooked, wherein several thousand men fought like wild beasts for scraps of food that the restaurants from Madison

Street had thrown out. It took 500 police to quell the riot.

In 1933, an officer of the other charities of Chicago, told him that there were 27,000 families on their roll, who had such insufficient heat, that they put their babies in the oven after cooking the meal, to allow the tiny bodies to absorb as much warmth as possible.

As William Lemke said in the debate in Congress, the law of self-preservation is a higher law than any man-made law. And the same idea was expressed to counsel a number of years ago by a friend of his, a foreman in an automobile factory, who was something of a philosopher, and who said, "A hungry belly knows no law."

Fortunately the farmer has been spared actual physical hunger. He has been able to grub out at least food for himself and family, shelter, and warmth.

Formerly he had been regarded by the working people of the cities with some fear and a great deal of respect. A land owner, monarch of all he surveyed. A horny handed son of toil, with muscles toughened and a physical strength equal to their own. A man with time to think, reason, and discuss. Why, the very word farmer, brings a sigh of respect from the worker in the city. Many of these people have not become acclimated to American institutions, as is the farmer. Not that they cannot be just as patriotic. We do not mean to imply the contrary.

But necessarily they have not had the opportunity to acquire the property that the farmer has. They have not been here long enough. To own a farm, costing $40,000.00 to $50,000.00, or $20,000.00, which would be the value of only 80 acres in the cornbelt a few years ago, means years of saving. And in many cases, per-

haps most of them, it means inherited wealth. Why the farmer is rooted into the very soil of the Republic. Tear him up, and you tear up the Republic and eliminate its source. The first thing that the immigrant to our shores learns, is stories about the farmer. Paul Revere's Ride. The Ragged Continentals. The Minute Men of Lexington. The farmers who starved at Valley Forge, just as they have starved the past 14 years. And the Civil War!

We are coming, Father Abraham,
Three hundred thousand strong,
We are coming from the mountain,
We are gathering from the plains,
Singing the Battle Cry of Freedom.

In every stage of American history the farmer looms large as the overpowering and decisive factor. When your working man takes his Susie or his Katrinka, or his Mimi out for an automobile ride on Sunday, where does he go? To the land of farms. To the countryside.

And there he sees a concrete symbol of stability, of conservation, of that which has made this nation great among the nations of the world. He turns from the fetid air of the city, with its banks, its insurance companies, its thousand and one parasitical enterprises that feed from the products of the land, and feed upon the industry of those who till the land, and he goes out to breathe the free air and enjoy the liberty of the rural areas.

And when he is starving, when he becomes a prey to the demagogue and the political scavenger, who holds him in check, and who will always hold him in check? The farmer! !

But teach the dissatisfied, starving and jobless worker of the city, that out on the quiet countryside,

there no longer stands the teeming millions of the descendants of the patriots of the Revolution, and you will see how quickly the red flag of anarchy will rear its head in the great cities, if we should slide back into the depression, instead of emerging from it. They will not know that no matter how the farmer may be oppressed, that his soul is the soul of America. That even above his love for his home and his family, is his reverence for God and his affection for his flag.

Let the tocsin of danger be sounded for the defense of the Republic, and the measured tramp of the countless millions of these sons of the soil, will again resound from the West, and the North, and South, and the East, to the call of their country, and so it always will be. And so we maintain that Congress in the passage of this Act, and those who desire to see it upheld and enforced, are more truly arguing in the interests of the mortgage holders, than are their paid satellites. We want the mortgage holders to prosper. We want them to be safe and secure. They also are a part of America. But Congress merely asks that they do the American thing by affording to the farmer just a long chance that he may be able to reclaim part of what he has lost. And that he may save just his home.

Economic conditions have already caused such losses as there may be to the mortgage holder. Relatively, the farmer has suffered infinitely more. At the most, as we will show, even if the farmer could buy at the present appraised valuation, and not at the possible reappraisal five years hence, the mortgage holders can not sustain an average loss of over $10.00 an acre, in such percentage of cases as are subject to the Frazier-Lemke Amendment. We are using the Iowa figures heretofore cited as a basis. But the farmer in that case is suffering a loss of $166.00 an acre.

Yet in spite of this, he pays the full appraised value of the property. More than any other debtor does under the Bankruptcy Act. In fact, under section 70 (b) the courts hold that the trustee may sell property at 75 percent of the appraised value, without first consulting the court. There it is recognized, that a sale on that basis, is such a mighty good one, that if the trustee can obtain it, the court says "Well done, thou good and faithful servant."

This court has held that there is dormant power in the Constitution which may be used in times of emergency.

So it upheld as constitutional a statute of the State of New York, which permitted one person to occupy the property of another person, and against such landlord's wish, for two years, by paying a reasonable rental.

In *Block* v. *Hirah*, 256 U. S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865, the question involved was the constitutionality of the Act of October 22, 1919, of the District of Columbia, which permitted the tenant of an apartment to remain therein after the expiration of the term fixed by the lease, so long as he paid the rent and performed the conditions fixed by the lease, or as modified by the rent commission of the district. An emergency existed there as it does at the present. The Act was limited to terminate within two years. The court said, p. 154:

> "But a declaration by a legislature concerning public conditions that, by necessity and duty, it must know, is entitled at least to great respect. In this instance Congress stated a publicly notorious and almost worldwide fact. That the emergency declared by the statute did exist must be assumed, and the question is whether Congress was incompetent to meet it in the way in which it has been

met by most of the civilized countries of the world. The general proposition to be maintained is that circumstances have clothed the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law. Plainly, circumstances may so change in time or so differ in space as to cloth with such an interest what at other times or in other places would be a matter of purely private concern. It is enough to refer to the decisions as to insurance, in *German Alliance Ins. Co.* v. *Lewis*, 233 U. S. 389, 58 L. ed. 1011, L. R. A. 1915C, 1189, 34 Sup. Ct. Rep. 612; irrigation, in *Clark* v. *Nash*, 198 U. S. 361, 49 L. ed. 1083, 25 Sup. Ct. Rep. 676, 4 Ann Cas. 1171; and mining, in *Strickley* v. *Highland Boy Gold Min. Co.*, 200 U. S. 527, 50 L. ed. 581, 26 Sup. Ct. Rep. 301, 4 Ann. Cas. 1174. They sufficiently illustrate what hardly would be denied. They illustrate also that the use by the public generally of each specific thing affected cannot be made the test of public interest (Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U. S. 30, 32, 60 L. ed. 507, 511, 36 Sup. Ct. Rep. 234), and that the public interest may extend to the use of land. They dispel the notion that what in its immediate aspect may be only a private transaction may not be raised by its class or character to a public affair. See also *Noble State Bank* v. *Haskell*, 219 U. S. 104, 110, 111, 55 L. ed. 112, 116, 117, 32 L. R. A. (N. S.) 1062, 31 Sup. Ct. Rep. 186, Ann. Cas. 1912A, 487."

The court continued, p. 155:

"The fact that tangible property is also visible tends to give a rigidity to our conception of our rights in it that we do not attach to others less concretely clothed. But the notion that the former are exempt from the legislation modification required from time to time in civilized life is contradicted not only by the doctrine of eminent domain, under which what is taken is paid for, but by that of the police power in its proper sense, under which property rights may be cut down, and to that extent, taken, without pay."

The reasoning of the court concerning the right of the landlord to speculate on increased rents, is rather appropriate to the case at bar. Here, if the land goes up in value, the farmer has to pay it, but in the case under consideration, the landlord only received the fixed rent. And it was held that while in one sense there was a taking of property, in that the landlord could not speculate upon the future increase in rents, that nevertheless this had to give way to the public interest.

The court said, p. 157:

> "Machinery is provided to secure to the landlord a reasonable rent. §166. It may be assumed that the interpretation of 'reasonable' will deprive him, in part, at least, of the power of profiting by the sudden influx of people to Washington, caused by the needs of government and the war, and thus of a right usually incident to fortunately situated property,—of a part of the value of his property as defined in *International Harvester Co.* v. *Kentucky*, 234 U. S. 222, 58 L. ed. 1287, 34 Sup. Ct. Rep. 853; *Southern R. Co.* v. *Greene*, 216 U. S. 400, 414, 54 L. ed. 536, 540, 30 Sup. Ct. Rep. 287, 17 Ann. Cas. 1247. But while it is unjust to pursue such profits from a national misfortune with sweeping denunciations, the policy of restricting them has been embodied in taxation and is accepted. It goes little if at all farther than the restriction put upon the rights of the owner of money by the more debatable usury laws. The preference given to the tenant in possession is an almost necessary incident of the policy, and is traditional in English law. If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail. Assuming that the end in view otherwise justified the means adopted by Congress, we have no concern, of course, with the question whether those means were the wisest, whether they may not cost more than they come to, or will effect the result desired. It is enough that we are not warranted in saying that legislation that

has been resorted to for the same purpose all over the world is futile, or has no reasonable relation to the relief sought. *Chicago, B. & Q. R. Co.* v. *McGuire*, 219 U. S. 549, 569, 55 L. ed. 328, 339, 31 Sup. Ct. Rep. 259."

To the same effect see:

Marcus Brown Holding Co. v. *Feldman*, 256 U. S. 170, 41 Sup. Ct. 465, 65 L. Ed. 877.
Levy Leasing Co. v. *Siegel*, 258 U. S. 242, 42 Sup. Ct. 289, 66 L. Ed. 595.

If the State has power to permit one person to occupy the *property of another*, at a reasonable rental, how much stronger is the power of the Federal Government to permit a farmer to occupy and use, *his own property;* by paying a reasonable rental therefor.

It has upheld a state statute which provides a moratorium on foreclosure of farm mortgages for 5 years.

Considering that the present emergency is far greater than existed in 1921, when the New York case arose, that the present emergency is still the same emergency that existed when the *Blaisdell case* was decided, it certainly does not seem unreasonable, nor unconstitutional, for Congress to provide that a farmer may occupy *his own property* for the same length of time, as the court approved in the *Minnesota Moratorium case*, and under a "reasonable rental", as the court approved in the *New York Rental case*.

But the lienholders' opposition narrows itself down to just one point of impact.

The lienholders, of which the one at bar is typical, desire the land. This is freely admitted. Because no other conclusion can be drawn from its and their oft reiterated assertion that Congress "has no power to take one man's property from him and give it to another."

Whose property is involved here? It is the farmer's. But the lien holders take the position they own it. Hence their statement "the debtor must surrender his property to his creditors." The two statements together merely mean that Congress cannot deprive them of the privilege they had under the Bankruptcy Act before it was amended, by which a lien holder could usually bid in the land and apply it against his indebtedness. Hence, their insistence that the Constitution prevents any such regulation as that we are discussing here. That sink or swim, these greedy creditors must get the last drop of blood, and must be permitted to peel the farmer right down to the hide, and perhaps even shave the cuticle. That is their construction of the Constitution. We say, and we think, that this Court is going to agree, that that is not the meaning of the Constitution. That the Constitution, instead of permitting any such avaricious, unreasonable, and uneconomic policy in this day of stress, expressly gives Congress the power to forbid it. We say that the procedure that this lien holder, and other lien holders are adopting, is unconstitutional, and violates every principle that the Constitution was passed to safeguard. That they are the persons, who are urging upon Congress, and upon this court, the adoption of an unsound, illegal, and unconstitutional procedure. That if their advice and their propaganda was followed, that they would turn Congress into an assemblage of pirates, that would scuttle the ship of state, as surely and as aptly as ever did a blood thirsty buccaneer on the Spanish Main sink one of the golden galleons. We say that if their construction of what the Constitution means was followed, the Constitution would become manacles around the wrists, and shackles around the ankles, of every progressive and forward thinking

citizen. That so irksome would be these restraints on the liberty of the citizens of this country, that it would be but a short time before they would rise in irresistible revolution, and that shortly we would have no such Constitution, of the kind these honorable gentlemen representing the lien holders contend we have.

So they insist that they have a right to bid in the land, take it for the indebtedness, or for a portion of the indebtedness, and transform Radford and other farmers in his position, from a farmer owner into a hired hand. And of course, if the Louisville Joint Stock Land Bank can do this, then the Frazier-Lemke Act cannot prevent any other mortgage holder from doing the same thing.

In other words, what their position really amounts to, is, that if this law which is here under attack, permitted the Louisville Joint Stock Land Bank to bid in the land, it would be a perfectly constitutional and just law. But otherwise if the same privilege is given to the owner.

THE ONLY CONSTITUTIONAL QUESTION

The only part of sub-section (s) of section 75 of the National Bankruptcy Act, that really is attacked, is sub-division (7). Because all the other sections relate to proceedings by consent, and such sections conceivably raise no constitutional question. Generally speaking, the lienholder can do what it wishes with its own property. But it is contended that if the lienholder does not consent to the sale, but objects, then it is mandatory upon the court to stay all proceedings for 5 years, and rent the property to the farmer for a "reasonable rental," with an option to purchase his own property at an appraised value fixed by the court, or at a higher reappraised value, subsequently fixed by the court.

When it is considered that the lienholder has no constitutional right to bid in the property, that he has not even a statutory right at the present time to his lien, aside from the Frazier-Lemke Act, if the court desires to sell the property free of liens, that the lienholder has no constitutional right to interest after the filing of the petition, and that he has not even a statutory right to interest under the present law, it would seem that the constitutionality of the Frazier-Lemke Act was clearly apparent, even if every other consideration was swept aside.

XI

WHAT REHABILITATES THE FARMER REJUVENATES THE NATION.

So many statistics could be adduced to prove the truth of this statement, as to bury an opponent to it beneath its weary tons. One-fourth of the nation is directly engaged in agriculture. That is, living on farms. The numbers directly dependent upon them must be at least 60 percent as large. The purchasing power of the farmer measured in terms of his income, is about 50 percent of his norm. The normal velocity of money ranges from 32.7 times for checks (outside New York, to 55 times on New York Securities. (Telegram Dow Jones, March 26, 1935). So give the farmer $5,000,000,000.00 more than he has been receiving, and see what happens when that income begins to circulate.

When it is considered as shown in a preceding portion of this argument, that the farmer has been struggling through a depression for the past 14 years, it can easily be understood what a tremendous backlog of necessities has been built up. Any one can see that for himself who drives through the Western country-

side. There is not one farm in 300 that doesn't need paint, fences, repairs of every description, mounting to totals so huge as to baffle the imagination.

There is not one farmer in 200 that has implements that are less than 10 to 15 years old. Modern labor saving devices are unknown on the farms. Radio sets are of the earliest models. The iceless refrigerator run by kerosene, and which offers an almost illimitable field, sells with the lethargy of poverty.

New clothing of the better grade, is almost unknown. Counsel who have a number of Frazier-Lemke cases, cannot recall one instance where the appraisal of wearing apparel exceeded $30.00. Go to any county seat on a Saturday night, or to church on a Sunday, and you can count the farmers, men and women, yes, and even the children, who wear new clothing of the better grades, on the fingers of one hand. Yes, there is new clothing being worn, but of the cheapest and shoddiest variety; by a class who owned substantial equities and even wealth, a decade ago.

The land has been milked to death for lack of fertilizer.

The estimates of repairs and new construction that could be built in the cities and towns, that is the urban centers, large and small, under the National Housing Act, run high into the billions. Multiply it by 10, and you would still be short, the possibilities inherent in the rehabilitation of the farmer.

In Benton County, Indiana, long rated by the Department of Agriculture as one of the premier agricultural counties of the country, there is hardly a farm house with a telephone. A new automobile, *owned by a farmer,* is almost a neighborhood curiosity. Insurance sales in the rural districts are at the lowest point in history.

All this is reflected in numberless ways through the smaller urban centers and spreading out through industry generally.

The farmer is a free spender when he has the money. That is a matter of common knowledge. So how can the national prosperity be helped by turning him into a hired hand at $20.00 a month, the current wage.

Few people realize the seriousness of the agricultural problem. Not only in dollars and cents, but in human equation as well. People read of two billions of dollars used to refinance farms. Or of three hundred million dollars, or five hundred million dollars spent for restricting acreage or the like. By itself, unquestionably such sums rival the riches of Midas. But it is not very much when it is considered that farm income is about $5,000,000,000.00 per year less than it should be. And that thereby using the velocity of money as 30 to 1, there is $150,000,000,000.00 less money velocity in the country than there should be.

The analogy that the farmer is the backbone of the country is a truthful one. And if the spine is injured, how can the body be healthy?

The breakdown of morale is also an element not to be lightly dismissed. Farmers have large families and large relationships. This is due to the fact that they have been rooted in the soil for generations. Have married into other families who in their turn, have spread their tenacles through the community. It is no uncommon thing to have a family reunion in the country, at which there are 500 relatives present. Evict one farmer unjustly! Is it human nature not to suppose that his relatives will have some feeling about it. Prevent a farmer from having a chance to reorganize when the same privilege is being extended to thousands of

corporations, including municipalities, and can it be expected that no resentment will result?

Under such circumstances, can the farmers' relatives believe that this is the country their ancestors founded, defended, and which they have helped to preserve?

Shall we forgive our debtors $10,000,000,000.00 *in foreign debts, more than the total amount of all the farm mortgages held in the United States, and still beggar our farmers?*

Did we spend our blood and our treasure to make the world safe for Democracy? And yet pauperize our farmers to gratify the whim of a greedy minority plutocracy?

It is unthinkable!

We believe this Court will agree, that in spite of our towering skyscrapers, bearing aloft their richly furnished offices, in spite of our gaudy temples of Mammon, with their RFC loans, in spite of our stately boulevards, great museums, stupendous libraries, large art institutes, and all the other concomitants of urban wealth and culture, that the future of this country, spiritual and physical, is indissolubly linked in its destiny with that of the man with the hoe. That this nation conceived by freemen, whose badge from time immemorial, has been the ability to own land, can never attain its proper place in the sun of the nations, while the farmer is left in the gloom of poverty, and the night of despair.

XII

EMERGENCY CALLS FORTH THE EXERCISE OF DORMANT POWER.

The contention of the greedy few, that the Constitution is a static thing, fixed and immobile, and that all the powers granted thereby, were sprayed forth the first

time Congress turned the nozzle, is not only repugnant to every right thinking student of constitutional law, but is one that in a time like the present, merits severe condemnation.

People with vision like this, would fiddle while the Republic burned. Not as Nero did, to gratify his lunatic glee, but because they couldn't imagine such a thing as a fire department.

The world has never progressed through the mind of the petty, and of the selfish man. Except where he became so numerous as to cause an explosion among his fellow citizens which irresistibly swept him away as an obstacle in the path of progress.

In the Constitution the Congress has always been able to find sufficient power to combat emergencies which have threatened the destiny of the nation. And this must be so, because the source of the Constitution is the people themselves. Certainly, as this court so recently observed, emergency does not create power. Any more than the pipes of peace breathe martial music to stimulate an army. But let the emergency arise, that threatens the nation, and the Constitution will always be found a sufficient source from which can be drawn the reasonable means to be prescribed by the Congress to meet the danger. The Constitution is the arsenal of the people's rights. *Innumerable and varied are the* weapons which lie concealed in the many storerooms of that mighty edifice. That is why those men who drafted the Constitution are so often referred to as its "architects." As times change, as the economic kaleidescope ceaselessly revolves its endless panorama, changes come to this, our Nation. Undreamed of by those wise men of the past who gave us this immortal heritage. But they placed at our disposal a great store

house with an infinite number of keys, and an infinite variety of cupboards. And they trusted to the wisdom of the future, to the destiny of the nation, to the protecting vision of the Most High, that as occasion demanded, the right key would be used.

The iron horse with its endless ribbons of steel, was not dreamed of by those great men of the past. But did that render the Safety Appliance Acts unconstitutional? And in the future decades, perhaps centuries hence, a different civilization will exist, with its different problems, that with all our advance in science, would seem as strange to us today, as would a country of 100,000,000 people bound together with bands of steel, have seemed to the members of the Constitutional Convention.

And in those far off days, as occasion arises, there lies ready for the hand of the Congress, weapons in that great store house of our organic law, which will meet, and so far as human fallibility may, conquer every emergency that will ever arise to threaten the safety of this nation, whether it comes from a cause within, as in the case at bar, or a cause without, as it did two decades ago.

In, *in re Cope*, 8 Fed. Supp. 778, the Court said all sections of the Bankruptcy Act were in *pari materia*, and the declaration of emergency in Section 78 would be considered as declaratory of the reason underlying all the recent reorganization amendments.

But the mere enumeration of the type of proceedings stayed under section 75 (o) shows that this section was born of an emergency. This is demonstrated still further by subdivision (7) of section (s), which provides that the Act shall apply only to debts existing at the time it became effective. As well as by the fact it

expires by limitation within five years from its passage.

However, we submit the emergency is fully recognized. It needs no legislative pointer to be realized.

While the number of farmers whose lands may be purchased under the Frazier-Lemke Act are a substantial percentage of the total farmers of the country, yet the effect of these farmers being thrown off their land and turned into peasants, or something similar to them, must also be thought of in terms of relationship. Farmers have many relations. In Benton County where this portion of the brief is being written, there are numerous families that have as high as 200 relations living within a very short radius. Family reunions are not uncommon with an attendance running up around 500. Therefore, when we consider that 5,000 evictions in a year may affect the morale of several hundred thousand people, it can be readily understood that the problem is not entirely one of merely the numerical number of farms involved.

The method proposed by the Congress is reasonable. The policy of the nation to promote the multiplication of freemen has been shown not only in the development of our own country, but in our policy towards other countries that have come under our protection, such as Hawaii, Porto Rico, Cuba, and the Philippines. Our policy towards these countries is worthy of that which animated the fathers of this great Republic.

> "It is the true imperial policy for a great civilied state engaged in the work of spreading civilization throughtout the world. In comparison with it, the colonial policies of other countries appear mean and sordid and altogether lacking in the element of altruism necessary to real success in executing the mission of civilization."
>
> ***John William Burgess***, Professor of Constitutional Law, Columbia University.

So, shall we revert to the system of government from which we revolted in 1776, and turn the clock back a century and a half? Are we going to make other peoples free and enslave our own?

In addition to the violation of the traditional policy of the Government, through the eviction of the farmer-owner, there is also the question of individual humanity involved. The Farm Credit Administration bulletin hereinbefore quoted from, stressed the frantic effort of the farmer and his family to keep their home.

The tatoo of the propaganda of dishonesty that the creditors insistently beat in the hearts of honest men. And which they have incessantly drummed throughout this proceeding. The adoption of methods frequently successful, to induce or force him to borrow from relatives and friends to satisfy the appetite of Moloch. The despair that invariably accompanies the farmer's failure to satisfy the insatiable. Then finally, the Juggernaut of eviction, with the attempted label of dishonesty, and the badge of failure, accompanied by the loss of home.

We have heretofore called to the Court's attention the published statement of a large mortgage holder as to the profit it expects to make out of its foreclosures.

There are numerous instances where farms are foreclosed for much less than their present market value. Radford's case is not of that type. But there are many who are in a different position.

This Court has stated it desires to be informed as to the consequences of legislation in *Willcutts* v. *Bunn*, 282 U. S. 216. Mr. Chief Justice Hughes said on page 230:

> "* * * no facts as to actual consequences are brought to our attention * * *."

We might mention the case of Mary Bodwell, of Winemac, Ind., where a farm assessed at $11,250.00 was foreclosed for $4800.00, and shortly after the owner evicted, sold for a price near the appraised value. This is the case of an old lady, owning 238 acres of fine land in Pulaski County, refused a loan by the Farm Credit Administration.

It might also be called to the Court's attention, that the Federal courts hold that the burden rests upon a party stating a law is unconstitutional, to show in what way he is injured.

The Louisville Joint Stock Land Bank has presented no evidence which indicates that the Frazier-Lemke Act will injure it. Its loss has already been sustained. In fact, we maintain that Act will be a great blessing to it. And for the Louisville Joint Stock Land Bank to acquire huge tracts of land against which its bonds are outstanding, and the purchasers know will have to be liquidated in order to pay interest on those bonds, and in order to comply with the provisions of the law, which require that the joint stock land banks *must liquidate*, obviously can be of no such benefit to it as the retention of farmers on the farms, the payment by them of interest or rental to it as lienholder, where now it receives nothing, and the eventual payment to it of the full appraised value of the land, or subseqently a much greater value.

It must be conceded that Congress could provide that a receiver could be appointed for a term of years for any bankrupt institution, and more especially for such as the farming class, and who could pay into court the proceeds fr m the farm until the debt was satisfied. There is no distinction between such a procedure and the creation of a situation whereby the farmer in effect,

becomes his own receiver, subject to the control of the court and the superintendence of the trustee.

XIII

AN EMERGENCY IS HERE. THERE IS A DISTINCT MENACE THAT OWNERSHIP OF FARM LANDS WILL PASS INTO THE HANDS OF A PRIVILEGED FEW. THAT THE OWNER-FARMER WILL DISAPPEAR AND BECOME A HIRED HAND. IF THIS HAPPENS, THE REPUBLIC AS WE KNOW IT, AND AS IT WAS INTENDED TO ENDURE, WILL BE AT AN END.

The principle at stake before this court is of far-reaching importance. While the farms taken over by lienholders amount to millions of acres, and as has been shown, in Benton County alone, to 25 percent of the tillable area, yet there are still hundreds of millions of acres of the public domain, that are not yet in foreclosure.

It is rather difficult to arrive in the limited time available, at any reliable estimate. But we can give the court some idea of the actual situation. According to Circular No. 309 of the United States Department of Agriculture, table 14 on page 58, in the appendix hereto, farm bankruptcies in 1925 to 1932, incl., totalled 45,891. A press release of the Department dated January 16th, 1935, gives farmer-bankruptcies as 5,917 in 1933, and 4,716 in 1934, making a total for the decade mentioned, of 56,524. Of the total, 2,020 in 1933, occurred in the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin, and 1,384 in 1934.

1,277 occurred in 1933 in the states of Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas, and these states in 1934 contributed 983

farmer-bankruptcies. Thus it is clear that the Middle West, comprising the great grain belts of the country, and where the most prosperous farmers have been situated, are the sections of the country where the creditors, that is the mortgage holders, are making the most desperate attempts to obtain the land.

It probably is not an exaggeration to state that the average farm involved in these bankruptcies, is at least 100 acres. In fact, for the grain belt, 200 acres would be probably a better average.

Thus, in 1933 and 1934, in the grain belt of the Middle West, there has been 5,664 farmer-bankruptcies, meaning that at least 5,600,000, acres of the choicest land of the country has been taken away from the farmer-owners, and taken over by the mortgage companies in straight foreclosure proceedings. That is only part of the story.

In Benton County, concerning which counsel has personal knowledge, approximately 25 percent is owned by the former large mortgage holders.

And we will shortly demonstrate that it is reasonable to assume that the large mortgage holders have acquired not less than 10,000,000 acres in the grain belt. The most fertile part of the nation. And the land's former prosperous owners are now hired hands or tenants.

That brings us to one of the most discouraging aspects of the entire farm mortgage default situation.

First we must remember that for 75 years, approximately the period that farm mortgages have become the investment of corporations, as distinguished from private individuals, they have been regarded as one of the highest types of investment securities. Not because of the value of the land alone, but because there stood

in back of the obligation an honest and industrious debtor. The honesty of the farmer is proverbial.

Hence, when after long years of floundering in the slough of the agricultural panic, which as we have demonstrated, began in 1921, the farmer reached an impasse in 1930, it was not a difficult matter for the mortgage holders to persuade farmers in many instances, to abandon any further battle against the economic stress, and to give them deeds to their farms. This policy became easy of accomplishment for two reasons. First, the farmers' natural trustfulness in the advice of the mortgage holder, whom he had learned to respect, in many instances the "field man" had become his personal friend, and then too, he desired to pay his debts. He felt that the land was held for the debt, and was ready and willing to surrender the security to the creditor.

So obviously, the farmer, harassed on the one side by the honest man's urge to do everything he could to discharge his obligations, on the other, tormented by the fear of losing his home, and deprived of any opportunity of providing for either his future or that of his family, and unable to obtain disinterested advice, went through such an agony of mind that we doubt if the history of the Republic affords any parallel to it.

The government publications heretofore referred to mention this.

For the first time in history, suicides were not uncommon in the rural districts.

But the statement made as to the acreage obtained by the mortgage holders in the Middle West for 1933 and 1934, is only part of the story.

Turn to page 58 of Bulletin No. 309, containing the statistics for 1925-1932, inclusive. This shows that during this period in the East North Central States[A] there

A. Ohio, Indiana, Illinois, Michigan, Wisconsin.

was 7,755 farmer bankruptcies. During this period in the West North Central States[B], were 14,672 bankruptcies, or a total for the Middle West of 22,327 farmer bankruptcies. Thus for the decade 1925-1934, there has been in the Middle West alone, a total of 27,991 court bankruptcy cases.

If in each case was involved only a 100 acre farm, much smaller than the average grain farm, as counsel knows it, there has been taken over by the mortgage holders, through bankruptcy procedure alone, 2,799,100 acres of land.

But this is very far below the actual figures, large as is this total.

There is a way in which we may arrive at a rough approximation of the menace to the Republic.

Assume that the land taken over had an average value of $60.00 an acre, which would be rather high as an average for all the loans made in these states, counting all the different varieties of land.

We will then take the annual report of five insurance companies, whose loans are made principally in the grainbelt of the United States. Take the farm lands that they have taken over, and it is apparent that the astounding total is something like 10,000,000 acres. The figures reproduced a little further on, are taken from the annual report of the Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin, for 1934, the Ninetieth Annual Statement of The Mutual Benefit Life Insurance Company of Newark, New Jersey, being its annual statement for 1934, the 72nd Annual Statement of the John Hancock Mutual Life In-

B. Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas.

surance Company of Boston, Massachusetts, being its annual report for 1934, the "Business Statement" of the Metropolitan Life Insurance Company of New York for 1934, being its annual statement for that year, and the Seventy fifth Annual Statement of The Equitable Life Assurance Society of the United States, of New York, being its annual statement for 1934. These statements show the following:

FARM PROPERTIES OWNED

The Northwestern	$ 32,477,579.45	(a)
Mutual Benefit	56,154,688.37	(b)
John Hancock	82,255,207.54	(c)
Metropolitan	286,415,857.18	(d)
Equitable	136,312,707.36	(e)
Total	$593,586,039.90	

Total acreage at $60.00 per acre, 9,893,100.66 acres

(a) Includes "Foreclosed real estate subject to redemption" $6,277,261.02.
(b) Character not stated. But first mortgage loans on city and suburban property show practically no decrease from 1932 to 1934. Whereas first mortgage loans on farms decreased one-third. Report page 14.
(c) Includes "Home office and other real estate."
(d) Character not stated.
(e) Character not stated. Includes foreclosed real estate subject to redemption.

Of course it would take a Congressional investigation to determine the exact facts and adequately publicize the appalling conditions. The 5 companies referred to, had total assets at the end of 1934 of $7,941,158,916.20.

Altogether at that time there were 318 legal reserve companies in the United States showing total assets at the end of 1933 as $21,197,582,350.00. The acreage owned by all must be tremendous. 10,000,000 acres in the grain belt, a conservative estimate.

Insurance Year Book, 1934.

The outstanding first mortgage farm loans of the five companies mentioned, were as follows:

The Northwestern	$ 141,066,523.40	
Mutual Benefit	91,640,000.37	
John Hancock	210,702,896.73	(a)
Metropolitan	1,237,805,549.03	(a)
Equitable	375,431,094.78	(a)
Total	$2,056,666,064.31	

(a) Character not shown.

Coming to the joint stock land banks, the following situation is shown as appears from the report of the Farm Credit Administration for 1934.

As of June 30th, 1934, there was in operation 45 joint stock land banks, including 3 in receivership. These joint stock land banks carried on their books "Net Real Estate," meaning thereby farm lands owned outright by them, of the value of $8,307,037.00.

Taking a valuation of $60.00 an acre, which would be far too high for these banks operating throughout the entire United States, it would mean that these organizations owned 1,384,506.16 acres of farm land.

It might be noted that the real estate already taken over by the 5 insurance companies mentioned, exceed the combined total assets of all the joint stock land banks of the United States, these being roughly $250,000,000.00.

It would seem trite to bring to the attention of the court, the careful methods that the Republic has always used to give its citizens a chance to acquire their own farms. The manner throughout its entire history, in which it has exercised care, as pointed out by the Court of Appeals, to see that the public domain is not concentrated in the hands of a few corporations.

Now in a crisis as vital as any that ever confronted this nation, it is contended that the entire system of American government should be overthrown, and the

theory on which it is based, and under which it has grown great, should be reversed.

This court should announce again, as it has so often in the past, as it has recently, that this is a country of free men. That the Congress has ample power to safeguard and to render secure the future of the nation, by all reasonable means.

WHAT ARE REASONABLE MEANS

We do not wish to try the patience of this great Court by being either philosophical, or metaphysical. We will try to express this idea in the language of the farmer. The man who founded the country. The class who formulated the Constitution.

Reasonable means are such as are adequate to meet the emergency while it is in existence, and which enable the nation to exist as its founders intended it should.

The Frazier-Lemke Act compels the farmer to pay the full appraised value of the property. More than any other debtor is compelled to pay. It subjects him to the hazard of having to pay a great deal more within 5 years. Hence, the secured creditor gets not only the value of the property, but there is preserved to him his chances through speculation. He is therefore deprived of nothing.

The farmer-owner is given an opportunity to remain as such. The man who has the most interest in that particular farm, is kept on it. He has a greater incentive to work and to slave, to be thrifty, resourceful, and hopeful, than any other human being on earth. If he can make good on his long chance, the millions of acres covered by delinquent mortgages are not concentrated in the hands of the few large financial institutions.

They are scattered out and owned by the hundreds of thousands of the class that have made this Republic. This serves the purpose of the founders of the nation. This allows the nation to exist as those patriots of the Constitutional Convention intended it should exist.

The emergency is evident. The means to combat it are reasonable. If successful, the nation will endure as it was intended to. If there was ever a law submitted to this Court that was constitutional beyond any cavil, it is this one.

IX

IN EVERY WALK OF LIFE A SELFISH MINORITY WILL ALWAYS CONTINUE TO THINK OF ITSELF FIRST, ITS FELLOW BEINGS SECOND. AS OUR LIFE IS A CONSTANT BATTLE AGAINST THE FORCES OF NATURE, SO NOW OUR ECONOMIC STRUGGLE IS AGAINST THE FORCES OF SELFISHNESS.*

We have in previous pages, especially in the historical review of bankruptcy legislation, culled largely from *"A History of the Bankruptcy Clause of the Constitution of the United States of America,"* by F. Regis Noel, shown how for 2,500 years, the debtor has been in a constant struggle to overcome the short sightedness of the creditor. How the very existence of nations has been at times threatened by the blindness of greed. How the state first moved to protect itself and exhibit a broadening viewpoint through the relief of the debtor's person and that of his family. Then, after centuries, came the discharge. Still later, the privilege given the bankrupt of being able to file a voluntary petition. And now for the first time in practically eight centuries, another great forward step is taken, and that

*Paraphrased from "The President Vanishes."

is by legislative enactment, the privilege given to a class of debtors, the farmer, to be the purchaser of his estate.

This has become necessary through the recognition by the Congress, that unless this privilege is accorded to the farmer, this Republic as we founded it, and as we know it, can no longer endure as such. The American people have been singularly fortunate in being able through a century and a half of abrupt and startling mutations, to preserve their theory of government. Undoubtedly this is due to the fact that this really is a land of equal opportunity and of equal voice in government.

And the Republic has been singularly fortunate, that in periods of great emergency, such as the present, its destinies have been guided by leaders unselfishly imbued with real Americanism, and that this great Court, in spite of its exalted and isolated position, has been able to find an echo in its own heart, of the heart throbs of the nation.

That it has been so well able to express the development of American jurisprudence:

> "The spirit of the time molds and shapes its law, as it molds and shapes its manner of thought and the whole current of its life. For law is the effort of a people to express its idea of right; and while right itself cannot change, man's conception of right changes from age to age, as his knowledge grows. The spirit of the age, therefore, affecting as it must man's conception of right, affects the growth both of the common law and of the statute law. But the progress toward ideal right is not along a straight line. The storms of ignorance and passion blow strong against it; and the ship of progress must beat against the wind. Each successive tack brings us nearer the ideal; yet each seems a more or less abrupt departure from the preceding course. The radicals of one period become the conservatives of the next, and are sure

that the change is a retrogression, but the experience of the past assures us that it is progress."

Joseph Henry Beale, Jr., "Jurisprudence; Its Development during the Past Century." Congress of Arts and Science, Volume III, page 227.

And well might that fine scholar say that "The progress towards ideal right is not long a straight line. The storms of ignorance and passion blow strong against it * * *"

We have noticed that every remedial law goes through four distinct phases of existence. The first is opposition in the legislature. Second, attack on its constitutionality. Third, attempt at emasculation by construction, and fourth, subversion through non-use. We are now passing the second, (in the lay mind), and entering upon the third and fourth cycles. After the law became better understood, it was recognized that Congress had carefully considered its constitutionality, with many lawyers in its membership, some the ablest in the nation. That counsel for four executive departments, as well as the Attorney General, had declared the law constitutional, as well as necessary. Then several district courts held the law constitutional, inexperienced advocates for lienholders became more familiar with the fundamental principles of constitutional law, and began to realize that every weapon in the Constitutional arsenal does not necessarily have to be displayed on the walls. Lienholders began to realize that the widespread propaganda that "Congress could not impair contracts," was but the empty vaporing of the ignorant, so, immediately, oblivious of the interest of the nation, and equally unmindful of the manner in which this nation had been founded and is intended

to endure, as they were of the elementary principles governing its organic low, they immediately began to scheme out methods by which they could emasculate it. And one of the most successful of these efforts is the Miner case.

THE MINER CASE

This is the decision by Judge Lindley in the District Court of the Eastern Division of Illinois in the case of *In re Miner*, 9 Fed. Supp. 1. In this case Filson, an attorney, trustee of a farmer at Danville, Ill., adopted the most unusual procedure, although possibly an authorized one, of filing a petition in the District Court asking for instructions as to his jurisdiction and responsibility. The construction of the Act was argued, against prominent counsel for several insurance companies, and other large lienholders. The District Judge rendered a lengthy opinion discussing the Frazier-Lemke Act, although actually not one controverted point had come before him for decision. In other words, this was not a case where the trustee, or the farmer-debtor, had applied to the referee for an affirmative order, and on a definite issue being raised, a petition for review has been filed.

Briefly, the court decided that under subdivision (3) of subsection (s) of section 75 of the National Bankruptcy Act, that since this section provided that the trustee should agree to sell to the debtor any part of his estate "with the consent of the lienholder," that if such consent was withheld, or refused, obviously the sale could not be made.

Subdivision (7) provides "if any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of

debtor's property as herein provided for * * *," then the court, after setting aside the exemptions, shall stay all proceedings for a period of 5 years, during which 5 years the debtor shall retain possession of his property provided he pays a reasonable rental therefore.

Judge Lindley decided that if the lienholder fails to file any "written objection," after refusing to "consent" to the sale, that in such event the unfortunate farmer is suspended like Mahomet's coffin, midway between the earth and the heavens.

That the entire effect of the law is nullified. That the farmer can neither purchase his property, nor retain possession of the same, but is relegated then merely to straight bankruptcy.

The learned judge appears to have overlooked section 2 of the National Bankruptcy Act, which provides:

> "That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several States * * * are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, * * * * * (15) *make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act;* * * *"

Indiana counsel can testify, from personal knowledge, that a few days after the opinion in the *Miner case* made its appearance, the lienholders were circulating mimeographed copies of the opinion to the referees, judges, conciliation commissioners, and litigants in Indiana and Illinois. (And doubtless other portions of the country.)

It is pertinent here to direct the Court's attention to a suggested procedure, and an order that has been entered in Frazier-Lemke cases, by Hon. Charles A. Burnett, Referee in Bankruptcy for the Northern District of Indiana. A man who has been referee for 34 years, and who is noted throughout the Middle West as a student of bankruptcy law. To effectuate the purpose of the Act, Referee Burnett directs the trustee, *inter alia* to serve a copy of the debtor's request upon the lienholders and they

> "are hereby required and ordered, within fifteen days from the receipt of such notice, to file their written consent with the trustee to such sale at the appraised value, or their written objection to the same."*

*The complete order:

"The referee having entered a finding that the debtor has duly filed a request to purchase all of his property, at the appraised value, remaining after his exemptions have been set aside, and having entered an order that the trustee proceed to obtain the written consent, or the written objections, of lienholders to the request of the debtor, and that the same should be set out in a separate order; now, therefore,

It is ordered:

That a copy of such request heretofore filed with the referee, be served by the trustee, by registered mail, upon the respective lienholders having liens upon any part of said property, and it appearing, that _____ Company, a corporation, of _____ has appeared herein by _____, its attorney, of _____, and is the only lienholder upon said real estate, the trustee is directed to serve by registered mail a copy of the debtor's said request, upon said lienholder, by addressing a copy of the same by registered mail to its home office at _____, and also by addressing a copy to its attorney aforesaid, by registered mail, and the only other lienholder appearing to be _____, the said trustee is directed to serve by registered mail a copy of the debtor's said request upon said creditor, and the said creditor, namely, _____, a corporation, and said _____ are hereby required and ordered, within fifteen days from the receipt of such notice, to file their written consents with the trustee to such sale at the appraised value, or their written objections to the same.

It is further ordered that, upon the trustee receiving the written consent of such lienholder or lienholders he sell to the bankrupt any part, parcel or all of the remainder of the property of said estate, as requested by the bankrupt and in accordance with the terms and conditions of said section 75 of the Bankruptcy Act, but only after a meeting has been held of creditors upon ten days notice, and upon such terms and conditions as may be determined after full hearing upon the same at said meeting of creditors.

And somewhat similar is the form suggested by Hon. Fred, H. Kruse, Referee in Bankruptcy, we believe, at Toledo, and whose form is reprinted in the fourth edition of Remington on Bankruptcy, Volume 9, page 719, Unofficial Form 533.

The *Miner Case* (9 Fed. Supp. 1), bears a peculiar relationship to the case at bar. The Miner case may be viewed in one of three aspects:

(a) This Court may follow the precedent of the Circuit Court of Appeals, who decided the proceeding at bar after the Miner case had been called to its attention, but who nevertheless disposed of the proceeding at bar upon its merits, treating the Miner case as a ship passing in the night, *sub silentio* and with averted eye. On the whole, having regard to the substantive question at issue herein, the theory of a Debtor's Relief Act, and the importance of an early decision with respect to the merits thereof, counsel for the debtor believe no one connected directly with this proceeding will have cause for complaint if this Court does likewise. And which would appear the reasonable procedure.

(b) This Court may examine the Miner case critically on its merits, and, as it deserves, overrule it. And, to counsel for the debtor, "this is a consummation devoutly to be wished," for verily, as to the farmers of this country it is, "the direful spring of woes unnum-

It is further ordered that upon written objections being filed by such lienholder or lienholders, with reference to the property covered by the lien of such lienholder, of which the bankrupt has requested possession, or which has been set aside as exempt, that a meeting of creditors be held upon ten days notice, at which meeting shall be determined, after full hearing, by the court, of what will be a reasonable rental for such property, and

It is further ordered that at said meeting the court shall consider, and make such other orders, as may be necessary to effectuate the purposes of said section 75 of the Bankruptcy Act.

Referee in Bankruptcy

bered." But as this result might deprive the counsel for the lienholder in the proceeding at bar hereafter, in relying on the *Miner case* in other cases of like nature, counsel for the lienholder might prefer not to discuss the Miner Case at this time. In one sense, they would prefer to have it overruled, for that would be a tribute to their professional standing. In another sense, a devotion to their client prompts the hope on their part, the Miner Case may be sustained at some future date and do its part in enabling farm mortgages to be foreclosed.

(c) Let us assume the Court asked counsel for respondent this question:

Can respondent in this case complain of an affirmance of the order in his favor, even if this Court assigns a wrong reason for such action?

The answer should (ordinarily) be, No.

Then counsel for respondent may intimate, the Court should pass on the constitutionality of the Frazier-Lemke Act. To this the Court might reply, constitutional questions are only decided when necessary to a determination of the particular case in which they are raised.

Then if the Court should ask counsel for the petitioner what he thought about the Miner Case? To which, counsel would (probably) reply, he did not agree with its doctrine prior to its decision, but now that it has been decided, it might be "a present help in time of trouble" for lienholders, if sustained on appeal.

So that counsel for lienholder not disputing the Miner case, and the Miner case, if followed, producing a result of which counsel for debtor could not complain,

the Court might *pro forma* adopt the Miner case *pro tempore* and affirm the Radford case without deciding the constitutional issue therein involved.

The hope is expressed that the last alternative will not be adopted in this case. Thousands are anxiously awaiting a decision of the Radford case on its merits, and their hopes to that end should not be disappointed.

To understand the Miner case, it is necessary to recur to the legislative history of the Frazier-Lemke Act.

When Mr. Lemke introduced the bill into the House of Representatives and Senator Frazier into the Senate, paragraph 7 was not a part thereof and paragraph 3 did not contain the words, "and with the consent of the lienholder or lienholders," now appearing therein.

In that state of the proposed legislation, paragraph 3 if enacted, would have stood as a peremptory legislative direction that a farmer should have the privilege of being returned unto his possession on the terms therein prescribed.

Paragraph 7 was added on the recommendation of the Senate Committee on Judiciary. The adding of that paragraph in the form enacted did not of itself produce any complications, for if paragraph 3 had not been changed, paragraph 7 would have stood as an alternative provision.

But, when the bill had passed the Senate, the words "and with the consent of the lienholder or lienholders" were added in the House.

Hence:

(a) It is argued by counsel for lienholders, that paragraph 3 is operative only with the consent of the lienholder, and that such consent must be an active,

affirmative, act, not mere silence, assent or acquiescence. So far, no trouble arises.

(b) But, and here is the rub: It is claimed that inasmuch as the act, as written, does not in words require the filing of written objections to the operative force and effect of paragraph 3, a lienholder is therefore not required to consent under paragraph 3 nor file written objections under paragraph 7, and may stand mute. In that event, it is claimed, that inasmuch as no written objections had been filed under paragraph 7, that paragraph did not become operative, and the farmer was debarred of any remedy under the Act.

The foregoing reason is fallacious. It allows the letter to overcome the spirit of the Act.

Let us refresh our recollection of the principles of statutory construction.

Every legislative enactment is to be given effect if possible.

All laws are to be given a sensible construction. In case of doubt a literal construction leading to an absurdity will be rejected in favor of a more liberal one which will effectuate the object intended.

A legislative act is to be interpreted according to the intention of the legislature.

A change in the language of a statute is evidence of a change of purpose on the part of Congress.

The intent, not the letter, of the statute constitutes the law.

The language of an Act of Congress is to be read in the light of its policy.

For the purpose of ascertaining the true meaning and intention of the words of a statute, regard is to be had to the evils which called forth its enactment.

Where the meaning of a statute is doubtful, the

reason and purpose of the act may be considered.

A construction of a statute which would make it void for want of any meaning should be avoided, if possible.

8 *U. S. Sup. Ct. Dig.* (L. Co.-op. P. Co.) pp. 576, *et seq.*

"Where possible, a statute must be construed as to give it force, effect and life." (9 Fed. Supp. 446.)

What is the true purpose and intent of the Frazier-Lemke Act, approved June 28, 1934? To allow farmers to retain mortgaged farms without the consent and over the protest of the mortgagees.

Could that have been done under the Act of March 3, 1933? No, for under that law, an encumbered farmer could not accomplish anything without the consent of the lienholder.

Can a farmer, under the doctrine of the Miner case, accomplish anything without the consent of the lienholder? No—

Hence it follows that the decision in the Miner case is not in accord with the well-settled principles of statutory construction hereinbefore stated and should be overruled.

The true doctrine is this: By refusing to consent under paragraph 3, the lienholder is in effect objecting under paragraph 7. The requirement of a written objection is merely procedural in its nature, and not substantive.

"He that is not for me is against me." A man who does not consent, in effect objects, as "consent" and "objection" are antonymes, the one of the other.

"Parties litigant are not allowed to assume inconsistent positions in court; to play fast and loose; to blow hot and cold."

Bensieck v. *Cook*, 110 Mo. 173, 182.

"A party is estopped to make a defense or objection inconsistent with a position previously asserted by him, which position was successfully maintained."

21 *Corpus Juris*, p. 1226, sec. 229, and *cas. cit.*

Hence one who does not consent, cannot claim that he has not objected.

The word "consent" has been defined as "assent." (169 N. Y. Supp. 391, 393.) Defendant "made no objection to the jurisdiction of the court, but tacitly acquiesced therein. Such a conduct is clearly * * * a consent to the jurisdiction * * * "

Toledo Fence & Post Co. v. *Lyons*, 290 Fed. 637, 640.
Consult, 2 *Federal Digest* (West Pub. Co.) Bankruptcy, 293 (4).

Consent is manifestly by action, or by inaction, or by silence, from which arises an inference that consent has been given.

In re Raphael, 192 Fed. 874, 876, it was ruled that where a party proceeded against in a proceeding in bankruptcy, did not raise any objection "to the jurisdiction of the court," he thereby consented to the jurisdiction of the court.

As heretofore stated, under sec. 2, clause (15), National Bankruptcy Act, a court of bankruptcy has jurisdiction to "make such orders * * * as may be necessary for the enforcement of the provisions of this Act.

Hence, Judge Dawson could have ordered the lienholder in the proceeding at bar, either to consent to or dissent from paragraph 3, and to have treated such dissent, if entered, as an objection under paragraph 7.

Hence, when the lienholder in the case at bar, filed written objections to paragraph 3 (Rec., p. 78), the lienholder was acting involuntarily, and not waiving its constitutional objection.

Therefore, the case should be decided on its merits.

THE FOURTH STAGE.

The embryos of the fourth stage are now already making their appearance. In the Monticello, Indiana, Daily Journal for March 15th, 1935, is a speech by William F. Collins, who it is stated "represents the farming interests in the Middle West of one of the large insurance companies."

According to the newspaper report, he paid his respects to the law under consideration as follows:

> "Mr. Collins denounced the Frazier-Lemke bill, declaring that all a debtor needed to do under its provisions was to feel himself 'aggrieved' in order to take advantage of bankruptcy. He said that if this form of legislation becomes popular, the business men will wish to have it applied to them, also, and that credit sources will be completely dried up from fright. 'No investor is going to be foolish enough to loan money unless he believes he has a reasonable chance to get it back', Mr. Collins said."

And yet, just before this statement, (the gentleman evidently being unaware of section 77 and 77B, giving "business men" financial reorganization privileges) the speaker said:

> "'Give the farmer 80 cents for his corn and $8.50 for his hogs the next year,' Mr. Collins said, 'and you will witness a real era of prosperity. The farmer needs everything, and he is a good spender when he has money.' He pointed out there was hardly a farm but that needs fencing, painting and roofing. Providing the present prices hold up the farmers will spend four and a half billion dollars in the next year for lumber, hardware and other repairs, which ought to be enough to start the machinery buzzing in the mills."

So the gentleman is going to make the country prosperous by preventing the farmer from financially reorganizing, by turning him out into the byways and the sideroads with his chattels and children. And in many cases, not even his chattels. *Do either hired hands or tenant farmers paint or repair?*

CONCLUSION

Joseph H. Beale, Jr., in the speech to which reference has been made, stated:

> "The most striking characteristic of the progress of jurisprudence in the first half of the century was its increasing recognition of individual rights and protection of individuals. Humanity was the watchword of legislation; liberty was its fetich. * * * Bankruptcy was treated as a misfortune, not a crime."

If this court will indicate that Congress has the constitutional right to give to a farmer the privilege of being the first purchaser of his bankrupt estate, that lienholders have no constitutional right to a distribution of the assets of a farmer who complies with the Frazier-Lemke Act, that it is the traditional policy of the Government, and the policy that has made the Nation great, to keep the farmer on his own farm,

a new epoch will have begun in the liberties of the people. If this law is held constitutional, the spoliation of agriculture is prevented. We say this advisedly. Imposing on the honesty of the farmer, the lienholders have induced him to denude himself of the major portion of his working capital to satisfy their desires. Both parties have been too short sighted, to see that by doing this a vicious circle was created, which worked to the detriment of each of them. The farmer in his haste and honesty to pay his debts, put himself in a position where he could not handle himself in the future. The lienholders, by accepting his sacrifices, got an honest debtor in a position where he could not possibly make good in the future.

A favorable decision by this Court will change all that. The honest, thrifty, industrious farmer, will be given an opportunity to make good. On the other hand, the lienholders if they wish, can immediately obtain very substantial sums from the government, by accepting the amounts offered by the Federal Land Banks under the Emergency Farm Mortgage Act of 1933, and which in many cases, are equal to the appraised values as found by the District Court. And which amounts are on an inflated plane and do not entail large loss to the mortgage holder. Numerous cases can be cited, where the differences between the debts and the amounts offered by the Land Banks are only 2 or 3 percent.*

While it is true that in the instant case no application was made to the Land Bank, such is not the general custom. The Farm Credit Administration has records of thousands upon thousands of unclosed applications,

*This is because the Federal Land Banks are required by the provisions of the Emergency Farm Mortgage Act of 1933, to take the 1909-1914 prices as a basis. Whereas appraisals in the District Court are usually based on the present market value.

due solely to the failure of the mortgage holder to accept the amounts offered by the Government.

We also wish to emphasize, that the validity of this legislation does not necessarily depend upon the existence of power exercised to meet an emergency. But in any event, the emergency does exist.

As Hon. William Lemke said in the classic brief he filed in this case in the District Court:

> "This Amendment marks a new epoch—from now on the debtor is going to be considered as well as the creditor. The Bankruptcy Act is going to become an act of conservation and not an act of wreckage."

It is respectfully submitted, that this court should hold the law constitutional, that the construction given it in the *Miner case* be disapproved, and that the essential position of the farmer in the future of the Republic be assured.

Respectfully submitted,

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APPENDIX

NEEDED: A DECLARATION OF MENTAL INDEPENDENCE.

Change is uncomfortable, but we should recognize that it is inevitable. Because it is uncomfortable to change, many refuse to face facts. We have our preconceived notions and we like to see things go along in the manner to which we have been accustomed. When they are not traveling in that direction we throw up our hands in horror and say the system is all wrong. We do not appreciate that events and people must compromise. Sometimes people are strong enough to compromise events; more often the events force people to compromise.

In many respects we must break with ideas of the past. Our life has changed. Our work has changed. Physical processes have changed. Boundaries have changed. The world has changed.

The problems that confront us today are difficult of solution. They will never be solved by a closed mind. It requires courage to meet these problems with an open mind. An open mind does not mean a mind that will accept new ideas, new plans, new thoughts, without inquiry. It does mean a mind that will carefully appraise new thoughts, new plans, new programs, without prejudice and, after having made that appraisal, will then weigh the value and necessity of these new programs against the old order of things. It further means that if we find a new order necessary to meet present day conditions, we will have the courage to accept it.

We are floundering in many of our present problems because of our unwillingness to admit that change is inevitable and because of our habitual desire to deny the necessity of anything that has not heretofore seemed necessary. It would be well to pause and consider that this nation itself resulted from change. America needs an open mind, a Declaration of Mental Independence.

HENRY H. HEIMANN,
Executive Manager, National Association of Credit Men.

In The

DISTRICT COURT OF THE UNITED STATES

For The Western District of Kentucky
Paducah Division

In the Matter of

WILLIAM W. RADFORD, SR.,
Debtor.

In Bankruptcy.

ADDITIONAL BRIEF FOR DEBTOR

The following observations are submitted for the consideration of the Court, in view of the decision of Judge Chesnut (D. C. Md.) on September 20, 1934, *In re.* Bradford, copy of which has been furnished the Court.

Judge Chesnut, at the outset of his opinion, italicizes the word "farmers." He stresses the fact that Section 75, National Bankruptcy Law (under attack in the case at bar), relates "only to farmers."

Later, in the course of his opinion, in stating his reasons for a judicial denunciation of the Frazier-Lemke Act, he said of the Minnesota Mortgage Moratorium Act, upheld by the Supreme Court of the United States (290 U. S. 398): "The [Minnesota] law applied uniformly to all mortgages and not alone to those of one specially favored class."

The issue of classification is settled, at least so far as this Court is concerned, by the decision in *Leidigh Carriage Co.* v. *Stengel* (6 C. C. A.), 95 Fed. 637, 646, *et seq.*

The opinion just cited is regarded by the textwriters as a leading case on this question. (See also, 186 U. S. 186.)

No limitation has been "placed upon Congress as to the classification of persons who are affected by such laws."

1 *Brandenburg on Bankruptcy* (4 Ed.), pp. 8, 9, sec. 6 (citing *Leidigh Carriage Co.* v. *Stenglo, supra*).

To the same effect:

1 *Remington on Bankruptcy* (4 Ed.), p. 26, sec. 4.
Black on Bankruptcy (4 Ed.), sec. 7.
1 *Collier on Bankruptcy* (13 Ed.), p. 8.
7 *Corpus Juris*, p. 19, sec. 9.
Title 11, U. S. C. A., p. 4, sec. 1.

Judge Chesnut, in the opinion under review decides all of the precedural questions raised by the lienholder in the *Maryland case* in favor of the debtor.

He next upholds the general principles of the Bankruptcy Act of March 3, 1933, as amended June 28, 1934, and refutes many of the constitutional claims made by the lienholder in the *Kentucky case, e. g.*, he decides:

Under Section 75, Act of March 3, 1933, of which Frazier-Lemke Act is an amendment and therefore a part, a stay of proceedings to foreclose a mortgage in a State Court "is authorized by the subsection (s) [the Frazier-Lemke Act], unless (a) It is unconstitutional, or unless (b) The title to the property had passed from the debtor by virtue of thef oreclosure proceedings before the filing of the petition in this case."

Judge Chesnut then decided that the exception hereinbefore quoted as (b) did not apply to the *Maryland case* on the ground that the property in question in that case "is still that of thed ebtor subject, of course, to the legal consequences of the mortgage."

In the *Maryland case*, there had been a sale under

foreclosure, but the State Court, as was necessary under the state practice, had not ratified the sale, nor had a deed been issued to the purchaser.

This left for consideration in the *Maryland case*, the exception hereinbefore noted as (a). Discussing this contention, Judge Chesnut ruled that "the provision now made constituting in substance a five year moratorium for farmers is novel and without precedent in our bankruptcy legislation," did not invalidate the Act.

The next subject discussed by him was the due process clause of the Fifth Amendment. To his statement of the rule in that respect, no exception is taken.

Judge Chesnut thereupon stated the effect of the Act of Congress as bearing on the rights of the mortgagee, contrasting the prior applicable provisions of the laws of Maryland relating to the foreclosure of mortgages.

The theory that the reasonableness of an Act of Congress is to be determined:

(a) By a critical analysis of the local statute otherwise applicable;

(b) Contrasting such analysis with a similar treatment of the appliacble congressional legislation; and then

(c) Holding that the Act of Congress is unreasonable, therefore void, because it differs in material respects from a State statute;

is quite novel in our jurisprudence. So far as the writer is advised, such a decision is without precedent and we hope without authority.

A bankrupt law is required to be uniform. Under Judge Chesnut's theory, a Federal Court in Maryland is required first to analyze the statutes of that State in order to set up an ascertainable standard of comparison as to reasonableness, then study the laws of forty-seven

other States (for he says, after analyzing the Maryland law on the subject under discussion, "substantially the same is believed generally to prevail elsewhere in this country"), and next decide that the power of legislation granted to Congress by the Constitution is limited by the extent to which such power has theretofore been exercised by State legislative bodies.

What becomes of the supremacy of the Federal legislative power as to all subjects within its jurisdiction if such a course of reasoning were adopted?

Is Congress to be limited:

(a) To the lowest level of State action;

(b) Endeavor to strike an average of State legislative concept; or

(c) Be free to emulate the highest degree of State legislative achievement?

All these questions arise, and prompt this further inquiry:

Are the laws of a State, challenged as unconstitutional under the Fourteenth Amendment, to be denied validity because substantially different from the laws of other States?

Suppose Maryland passed a duplicate of the Frazier-Lemke Act, would the latter thereafter and on that account receive the approval of Judge Chesnut?

> "The Bankruptcy Act having been passed by Congress pursuant to the power delegated to it by the Federal Constitution is the supreme law of the land and its provisions are paramount to any State statute."
>
> *Gilbert's Collier on Bankruptcy* (2 Ed.), p. 6, Sec. 1, sub. d.

"The bankruptcy law is paramount * * *" (190 U. S. 27).

"* * * State laws to the extent that they conflict with the laws of Congress, enacted under its constitutional authority on the subject of bankruptcies are suspended" (245 U. S. 613).

"The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount" (278 U. S. 265).

Consult, *McCulloch* v. *Maryland*, 4 Wheat. 316; *Sturges* v. *Crowninshield*, 4 Wheat. 122.

But according to Judge Chesnut, a law on the subject of bankruptcies:

(a) Is not valid if not reasonable;

(b) Is not reasonable if more liberal than the laws of the State in which the debtor lives.

Such a course of reasoning, if upheld, would in effect nullify the recognized and declared supremacy of congressional action on a subject within its jurisdiction, for the reasonableness, hence the validity of congressional action, would then depend on and be limited by State action.

Judge Chesnut points out his concept of the changes made by the Frazier-Lemke Act in the rights of the mortgagee:

"The most important are: (1) His right to realize on the security, in event of default, is suspended for five years."

The right of a State to suspend the right of a mortgagee to foreclose his mortgage was upheld in the *Minnesota Mortgage Moratorium case* (290 U. S. 398).

And the mortgagee, under the Frazier-Lemke Act, does realize on his security to the extent of receiving a reasonable rental for the property, which is all, as a practical proposition, he might otherwise receive in the present state of agricultural depression in this country.

Judge Chesnut then adverts to the five-year period of moratorium granted by the Frazier-Lemke Act: "This period is fixed and absolute * * *"

The fact that a time for redemption is fixed by statute at an absolute period does not of itself render such statute invalid.

Judge Chesnut criticizes the period of redemption fixed in the Frazier-Lemke Act because it is for a fixed and determinate the period of time.

An examination of Martindale-Hubbell's Law Digests discloses:

a) Delaware, District of Columbia, Florida, Hawaii, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Philippine Islands, Puerto Rico, Rhode Island, South Carolina, Texas, Virginia, West Virginia and Wisconsin have no statutory period of redemption after completion of foreclosure, except as hereinafter specified.

(b) Statutory periods of redemption after completion of forecloseure are provided as follows:

Alabama. Two years.
Alaska. One year.
Arizona. Six months.
Arkansas. Twelve months.
California. One year.
Canal Zone. One year.
Colorado. Six months.
Connecticut. Time fixed by court in entering decree.
Georgia. Ten years.
Idaho. One year.
Illinois. Twelve months.
Indiana. One year from institution of suit to foreclose.
Iowa. One year.

Kansas. Eighteen months. During the period of redemption, the owner is entitled to the possession of the property and the rents, issues and profits thereof.

Kentucky. If property sold for less than two-thirds of appraised value, execution defendant has one year in which to redeem during which time the execution defendant may remain in possession thereof.

Maine. One year.

Massachusetts. Three years.

Michigan. Six months.

Minnesota. One year.

Missouri. One year on giving security provided by statute.

Montana. One year.

Nevada. Six months.

New Mexico. No sale until sixty days after decree. Redemption within nine months after sale.

North Dakota. One year.

Oregon. One year.

South Dakota. One year.

Tennessee. Two years.

Utah. Two years.

Vermont. Six months.

Washington. One year.

Wyoming. Six months.

Moratoriums exist in Michigan in the discretion of the Court not beyond March 1, 1935; Minnesota as quoted 290 U. S. 398; New York for a definite period; Ohio in the discretion of the Court; Oklahoma for nine months and thereafter in the discretion of the Court; South Dakota two years on the conditions stated in the statute; Texas and Wisconsin respectively in the discretion of the Court.

In Iowa, Kansas and Minnesota, during the period of redemption, the mortgagor remains in possession of the mortgaged premises.

Surely this general recognition of the legislative right to fix a definite period of redemption is conclusive proof that any criticism of such practice is quite unwarranted. Maryland has no period of redemption. A lifetime was spent in the practice of the law in Maryland by Judge Chesnut. *Res ipsa loquitur.*

Judge Chesnut overlooked the effect of *Chastleton Corporation* v. *Sinclair,* 264 U. S. 543. In that case, the Court said, referring to an Act of Congress continuing rent regulation in the District of Columbia in force from May 22, 1922, to May 22, 1924:

> "A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed."
> "It is always open to judicial inquiry whether the emergency still exists upon which the continued operation of the law depends" (290 U. S. 442).

Later, in the course of his discussion, Judge Chesnut recognized that certain cases in the Supreme Court of the United States "do decide that in a legislatively declared emergency directly affecting the public interest, laws of temporary duration, proportioned to the emergency, and terminating with it in effectiveness, may validly create a reasonable moratorium against the enforcement of their legally valid claims by landlords and mortgagees, on condition of payment to them of the reasonable rental value during the period of the moratorium."

He next ruled: "The present law goes much further" than the cases cited. He noted what are claimed to be important differences in the *Maryland case,* "* * * as contrasted with the *Minnesota Mortgage Moratorium Act.*" These differences are thus enumerated:

(a) "There [in the *Minnesota case*], the time

could not exceed two years and one month, and was not arbitrarily fixed at all but to be determined by the Court and was terminable sooner if conditions warranted."

So far as this last mentioned point of difference is concerned, the cases hereinbefore cited (*Minnesota Mortgage Moratorium Act case* and *District of Columbia Rent case*), decide that a Court may control the operative term of emergency legislation. So, whether Congress fixed a time or whether it did not, the net result is that in the last analysis of the situation, the Court determines the length of time that the law shall operate.

In connection with the differences between the Minnesota Mortgage Moratorium Act and the Frazier-Lemke Act, Judge Chesnut, in the Maryland decision, used this language: "And even more importantly [in the *Minnesota case*], merely the time for the exercise of the right of redemption by the mortgagor * * * might be extended by the Court." That is true in effect under the Frazier-Lemke Act. The Court, in passing on the reasonableness, hence the validity, decides, under the cases cited *supra*, has the emergency ceased? Thereby in effect the Court fixes the period of redemption.

Judge Chesnut regards as important the fact that in the *Minnesota case*, the law contemplated "the full payment of the debt," that "the integrity of the mortgage contract was not otherwise impaired," and that there "was no authorized 'scaling down' or 'partial cancellation' of the debt."

Judge Chesnut forgot, in comparing a State statute with a Federal statute, that he was considering two different subjects, each governed by varying constitutional provisions.

(a) A State may not impair the obligations of a contract (U. S. Const., Art. 1, Sec. 10, clause 1).

See *U. S. C. A., Constitution*, Part 2, p. 31; *Sturges* v. *Crowninshield*, 4 Wheat 196.

Hence a State may not pass an insolvency law as applying to a pre-existing debt.

(b) But Congress in the enactment of uniform laws on the subject of bankruptcies may impair the obligation of contracts (186 U. S. 186).

> "The very essence of a national bankrupt system is the doing away with pre-existing contracts * * * and the making of such reasonable exemptions of property to the bankrupt as will keep him from absolute poverty, give him some means to commence life anew, support and educate his family, and make him a good and useful citizen.
>
> "Upon the subject there is no constitutional inhibition imposed on Congresss, and it can exercise the full powers of sovereignty, and is only restrained by the broad principles of justice and enlightened statesmanship and the responsibility felt by its members to their constituents."
>
> *In re Vogler*, Fed. Cas. 16,986.

The subject of "scaling down" of debts is treated in our former briefs, and need not be further considered.

As to a law applying "to those of one specially favored class," quoting from Judge Chesnut, that issue as already stated, is precluded, so far as this Court is concerned, by *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. (6 C. C. A.) 637, 646.

The next point of difference noted by Judge Chesnut between the Maryland applicable law and the Frazier-Lemke Act is thus stated:

> "(2) (a) At the end of the [five years] period the title to the security is transferred to the mortgagor,
>
> "(b) Upon payment of a sum determined by

appraisers (subject to a somewhat uncertain judicial review),

"(c) And which may be for an amount substantially less than the mortgage debt."

As to (a), in the liquidation of the estate of a debtor, the title to his property must be transferred to somebody. Hence the fact that the title of the debtor, in certain circumstances, is revested in the mortgagor, is not of itself controlling. If that were otherwise, a foreclosure law which operated to transfer the title to a mortgagee would likewise be invalid.

Prior to the Frazier-Lemke Act mortgages were foreclosed in many States through the process of a Court of equity. In such States, the mortgagee obtained title to the property by a foreclosure sale at which the bid was not necessarily equal to the amount of the debt. The sale, in such cases, was subject to the approval of the Court. The Court, in approving the sale, determined in effect the reasonableness of the bid, and hence considered the value of the property. In the case at bar, that value for forced sale purposes is fixed in the answer at $5,000, which is about two-thirds of the amount of the judgment. Upon the confirmation of such a sale, the holder of the mortgage becomes the new owner of the property, leaving the former owner in debt, and without a farm. This debt was discharged in bankruptcy.

The net result of such a process was to destroy, on the part of farmers, land ownership, a natural incident of human life, reaching in history to the Garden of Eden, for, we are told, Adam and Eve became the owners of the Garden of Eden in fee simple, except as limited by a condition subsequent (Consult Lev. 25: 1 Kings, 4:25; 2 Kings, 18:31; Isa. 36:16; Mic. 4:4).

So Congress, instead of selling the land to the holder

of the mortgage at a price approved by the Court, reversed the process. The land is sold to its former owner at a price fixed by the Court.

A holder of a mortgage does not have a constitutional right to become the unconditional owner of the mrtgage security. Centuries after Magna Carta was decreed, courts of equity invented the doctrine known as the equity of redemption. This doctrine prevails in Kentucky and in Maryland.

As to the portion of a mortgage debt remaining unpaid after the foreclosure of a mortgage:

(a) Prior to the approval of Frazier-Lemke Act, a mortgage debtor could have filed a voluntary petition in bankruptcy and discharged such an obligation. If he had assets not sold under the foreclosure of the mortgage, the mortgage creditor would have received his due share in such assets by a dividend on that part of his claim allowed as an unsecured claim. If the mortgage debtor had no assets not sold under mortgage, the creditor received no dividend on his unsecured claim.

(b) The same result follows under the Frazier-Lemke Act, with this important difference: The farmer, not the creditor, becomes the owner of the farm.

The fact that the Act gives a farmer five years in which to buy the farm, is not unreasonable. In the Katy foreclosure cited in our Rejoinder Brief, the Court waited six years for a railroad reorganization to be consummated. The *Orient case*, cited in like manner, occupied the time of Judge Pollock over fourteen years.

Originally, in England, an equity of redemption, unless foreclosed by a Court of equity as an act of grace, and not of right, was outstanding twenty years.

As to the intimation of Judge Chesnut, that a farmer may repurchase the farm formerly owned by him "upon payment of a sum determined by appraisers (subject to

a somewhat uncertain judicial review)", the sum of which the farmer is required to pay in order to be returned unto his possession, and again dwell under his own vine and fig tree, is determined by the Court. The fixing of such sum is a judicial act which must be performed by the Court just as a Court in a decree of foreclosure may fix an upset price and refuse to confirm a bid at a judicial sale deemed inadequate by the Court.

As to the criticism by Judge Chesnut, that the price paid by a farmer for his prior possession in the circumstances stated in the Frazier-Lemke Act, may be "for an amount substantially less than the mortgage debt," such fact is not controlling. No law requires a creditor to bid the full amount of the mortgage debt in order to acquire the title to the land. Why should a debtor be required to do more than a creditor, in order to acquire title to land which neither of them owns in fee simple?

Next, Judge Chesnut says of the Frazier-Lemke Act: "(3) No provision is made for a deficiency claim by the mortgagee against the bankrupt's estate."

The Frazier-Lemke Amendment is Subdivision (s) of Section 75 of National Bankruptcy Law. Hence, a part of Section 75. Section 75 is a part of the bankruptcy law, hence to be construed in connection with the whole Act of which it is a part.

A mortgage creditor proves his claim against a bankrupt under the Frazier-Lemke Act just as he would have proved his claim against a debtor if the Act had not been passed. If the debtor has other assets, the mortgage creditor is paid a dividend. If there are no assets, the mortgage creditor receives no dividends. This result is the natural incident of any law on the

subject of bankruptcies, and is not peculiar to the Frazier-Lemke Act.

Judge Chesnut also mentions the fact that under the Frazier-Lemke Act, a farmer may have "at least a six-months' moratorium without any compensation therefor to the mortgagee." This provision in redemption statutes is very common. See analysis of such statutes, *ante*, pp. 8, 9.

Under railroad foreclosures, the receiver in charge operates the road, applying its income to operating expenses, without paying the bondholders interest or rental. Under railroad reorganizations, stockholders and general creditors in the old company are usually accorded an interest in the new without paying in full past due interest. Why should the same consideration not be extended to a farmer?

The Court is dealing with a bankrupt. All his property except his state exemptions has passed into the custody of the Court. The value of the farm depends upon its continued operation. Shall it grow into weeds and be a wilderness, or shall the farm continue to be cultivated? Where could the mortgage holder find a tenant able to pay his rent in advance?

Why does Congress not have the right to grant a farmer an exemption from the payment of rent for six months, just as it may grant in the nature of an exemption the title in fee simple to a farm to a mortgage debtor, if such action be not arbitrary or unreasonable?

Again, if Judge Chesnut is of opinion that the rent should be paid in advance, he should remember that he is the judge of a court operating on equitable principles, and has the right, according to the maxim, "he who asks equity must do equity," to require such payment to be made as a condition of granting the relief asked in the Maryland case. To declare an entire statute void

for this reason alone would be an instance of arbitrary and unreasonable action by a person holding the office of judge outdistancing in that particular, the Act which Judge Chesnut has declared invalid.

Recurring to the opinion in the Maryland case: "It is obvious that the changes are material and prejudicial to the mortgagee, and not only his remedies but also his substantial rights are materially impaired;"

This statement reveals the error of thought permeating Judge Chesnut's opinion. He confuses the law of a state which may not impair the obligation of a contract (witness his citation of *Worthen v. Thomas*, 54 Sup. Ct. 816, dealing with a state statute), with an Act of Congress on the subject of bankruptcies which may impair the obligation of a contract (186 U. S. 186).

How could a bankruptcy law be passed giving a debtor any relief which did not materially change and impair the rights and remedies of a creditor. Such is the essential purpose of a law of the character named.

Judge Chesnut characterizes the effect of the Act in this manner: To "scale down existing farm indebtedness to the value of the property." And continues: "The result is obviously a 'partial cancellation of the debt,' and necessarily the impairment of the integrity and terms of the mortgage indebtedness."

To scale down and partially, sometimes wholly, cancel a debt is the object of a law on the subject of bankruptcies. To condemn such a law for the reason stated would make it impossible to pass such a law unless it were limited to the sole purpose of paying money to a creditor and gave no relief whatever to a debtor. The learned Maryland Judge continues: "In another aspect the substantial effect is to transfer the property of one person to another by requiring the mortgagee to sell his interests in the property to the mortgagor at a price

which the former has no part or influence in fixing."

Here is a curious example of a failure to understand the essential functions of a Court. A party to a judicial proceeding does not have "any part or influence" (as those terms are usually understood), in moulding judicial action. The final action is that of the Court, in which no one has any part except the Court, and in which the only influence properly functioning, is the influence of reason and justice, a law which has no respect for persons and is never influenced by any party to an action.

What "part or influence" has a debtor in fixing the price at which his land passes from him by virtue of a judicial sale?

As to taking "private property for private use:" Heretofore the law has sedulously enforced the right of creditors, and often knew not the rights of a debtor. Congress has legislated to change the angle of reflection, and such change does not impair the gladsome light of jurisprudence, but gives it a new vision, where "they shall sit every man under his vine and under his fig tree, and none shall make him afraid; for the mouth of the Lord of hosts hath spoken it" (Micah, 4:4).

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The Agricultural Situation

A Brief Summary of Economic Conditions

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A LEAN WINTER FOR THE LIVESTOCK INDUSTRIES

Throughout the North, where the livestock industries loom large, it is fortunate that the earlier part of the winter was not as severe as last month. The mild earlier weather together with the reduction in numbers of animals and Government emergency measures eased the critical feed situation that had been anticipated. But last month was a hard one.

Livestock men are now living through the real aftermath of the drought. The feed supply is short. One has only to glance at the figures of stocks of grain on farms January 1 to get this feed picture. Farm stocks of corn amount to 800,000,000 bushels, which is about 300,000,000 bushels under the shortest supply previously recorded. Then, it also appears that from October through December less than 580,000,000 bushels of corn have been used in this country, as compared with about 920,000,000 bushels used in the same period last year. That gives an idea as to how the feeders have tightened up. Of course there are fewer pigs to be fed. But men everywhere are feeding with one eye on the granary and mows and the other on the calendar.

A typical result of the tight feed situation shows up in the figures on milk production. Last month the production per cow for the entire country was the lowest of which this Bureau has record: 10.88 pounds compared with a January 1 average of 12.13 pounds. A decline of 2 percent during December contrasted sharply with the usual increase of 2 to 5 percent in that month. Dairymen generally report that they are feeding about 20 percent less concentrates than a year ago.

Speaking more broadly of the dairy situation, however, one can see some daylight ahead—for those who can hold out. More than 2 million cows were disposed of last year, the greatest reduction in the 5 years recorded. The proportion of heifers in the herds is unusually low. In other words, the herds have been drastically reduced; milk-cow prices are at the low point of the cycle (the last peak in that

It has been suggested that instead of the index of prices paid by farmers for goods alone, the parity standard should include also the prices of services, such as are represented by farm wage rates, cash payments on farm real estate, and interest payments on farm mortgages. In 1929, when prices paid by farmers averaged 153 percent of pre-war, the inclusion of these cost items would have given an index of 185, or a parity standard 8 percent higher than prices paid for goods alone. At the present time, however, when farm wage rates are relatively lower than prices paid by farmers for goods, and interest and taxes payable have declined to 160–170 percent of pre-war instead of 231–243 percent in 1929, the combination of prices of goods and services is only 127 percent compared with 126 percent for commodities alone. This combination is a broader standard, but being essentially a price measure, it does not reflect the changes in the volume purchased from year to year, or as between the post-war and pre-war years.

An attempt to take changes in volume of both sales and purchases into account is made in table 1. From estimates of gross farm income as published by the Bureau of Agricultural Economics, there have been deducted selected expense items which constituted in the post-war years approximately 90 percent of the total production expenditures as estimated by the Bureau, exclusive of the labor of the farm operator and his family. The balance thus obtained is available as return for the farmer's investment for his labor and gives approximately the "net" income available for the goods and services used in the farm home to maintain the farmers' standard of living. Between 1909 and 1929, gross income increased 77 percent, and estimated expenditures increased 141 percent.

In 1932 gross income was 21 percent below pre-war, selected expenditures 27 percent above, and the balance available for other purposes 44 percent below. These comparisons do not take into account the inventory gains up to 1920 nor the losses in the post-war and post-1929 depressions.

"Net" income attained a purchasing power of 128 percent and 136 percent of pre-war during 1917 and 1918, declined to 65 percent in 1921, reached 97 percent in 1925, and 91–92 percent in 1928–29. In this depression, it declined to 52 percent in 1932 and by 1934 recovered to 79 percent. The year to year changes in this series are shown in figure 2.

Table 1.—FARM INCOME AND EXPENDITURES AND RATIO OF BALANCE TO EXPENDITURES

Year	Gross income [1]	Selected expenditures [2]	Balance available	Gross income	Selected expenditures	Balance available	Prices paid for commodities bought for family maintenance	Ratio of available income to expenditures
	Million dollars			Percent (1910–14=100)				
1909	6,238	1,886	4,352	92	87	95	96	99
1914	7,028	2,338	4,690	104	108	102	102	100
1917	12,832	3,543	9,289	190	163	206	147	133
1918	15,101	4,186	10,915	223	193	238	177	135
1919	16,935	4,820	12,115	251	222	264	210	126
1921	8,927	4,136	4,791	132	190	104	161	65
1925	11,968	4,691	7,277	177	216	159	154	97
1929	11,941	5,246	6,695	177	241	146	158	92
1932	5,331	2,758	2,573	79	127	56	108	52
1933 [3]	6,256	2,553	3,703	93	117	81	109	74
1934 [3]	7,200	2,800	4,400	107	129	96	122	79

[1] Calendar years for livestock and livestock products, crop years for crops, as reported by the Bureau of Agricultural Economics.

[2] Includes: (1) Wages (cash and board); (2) feed; (3) fertilizer; (4) taxes; (5) mortgage interest (total); (6) grazing expense; (7) purchases and operating expenses of all farm machinery (including tractors, trucks, and one-half automobiles); harness and saddlery.

[3] Including rental and benefit payments.

The total of these selected items was equivalent to 94 percent of all production expenses for the 10-year period 1924–33, as reported in the August 1934 Crops and Markets, p. 318. However, these reported production expenses did not include board as a part of the wage bill. If board (which is among the selected items enumerated above) is added to the total production expenditures reported, then the selected items are equivalent to 90 percent of the total for the 10-year period. The detailed expenditure figures from 1919 through 1933 were furnished by the Bureau of Agricultural Economics. Prior to 1919 estimates are partially those of the Bureau and partially those of the Agricultural Industrial Relations Section of the Agricultural Adjustment Administration.

Table 2.—AGRICULTURE'S SHARE OF NATIONAL INCOME, 1909–34 [1]

Year	National income	Contributed by agriculture		Year	National income	Contributed by agriculture	
	(Million dollars)	(Million dollars)	Percent		(Million dollars)	(Million dollars)	Percent
1909	26,420	4,983	18.9	1922	57,926	7,200	12.5
1910	28,024	5,218	18.6	1923	65,949	8,026	12.2
1911	28,376	4,815	17.0	1924	68,461	8,525	12.5
1912	30,358	5,294	17.4	1925	73,067	9,089	12.4
1913	31,909	5,133	16.1	1926	74,954	8,214	10.9
1914	31,669	5,081	16.0	1927	76,007	8,371	11.0
1915	33,083	5,488	16.6	1928	77,291	8,109	10.5
1916	38,884	6,631	17.1	1929	79,702	8,254	10.4
1917	46,575	9,188	19.7	1930	72,890	6,320	8.7
1918	54,784	11,205	20.5	1931	60,796	4,689	7.7
1919	59,550	12,183	20.5	1932	47,960	3,582	7.5
1920	66,928	11,067	16.8	1933	46,090	4,587	9.9
1921	55,430	6,967	12.6	1934 [2]	51,920	5,287	10.2

[1] Realized income from production of goods and services based on data of (1) National Bureau of Economic Research as published in America's Capacity to Consume by Brookings Institute, (2) U. S. Department of Commerce, and (3) Bureau of Agricultural Economics U. S. D. A. Extension of data for 1929–34 made in Agricultural Adjustment Administration.

[2] Preliminary estimate.

Table 3.—NATIONAL AND FARM INCOME PER CAPITA, 1909-34

Year	Population (000)		Per capita income[1]			
	Total United States	Farm	Total United States	Farm[2]	Ratio farm to total	
					Annual	1910-14=100
					Percent	Percent
1909	90, 832	32, 125	$294	$155	53	105
1914	97, 220	31, 802	326	159	49	97
1917	101, 466	31, 753	459	289	63	125
1918	102, 880	31, 707	533	353	66	133
1919	104, 266	31, 660	571	385	67	134
1921	107, 875	31, 703	516	220	43	85
1925	114, 035	31, 061	641	293	46	91
1929	120, 694	30, 237	669	273	41	82
1932	124, 511	31, 241	385	115	30	60
1933	125, 197	29, 242	368	141	38	76
1934	126, 009	32, 509	412	163	40	79

[1] Population figures for 1910 to 1929 interpolated. Non-census years following 1930 are estimates by the Bureau of Agricultural Economics.

[2] Based on estimates of national income and on amounts contributed by agriculture derived primarily from farm production, other sources of income to farm people not included.

THE FARMERS' SHARE OF THE NATIONAL INCOME

The national income, if defined as realized income from the production of goods and services, amounted to $26,400,000,000 in 1909, $79,700,000,000 in 1929, and $51,900,000,000 in 1934. The amount attributed to agriculture is about $5,000,000,000 in 1909, $8,300,000,000 in 1929, and $6,300,000,000 in 1934. (See table 2.) These amounts attributed to agriculture are obtained from the estimates of gross income by deducting only certain expenditures such as property taxes, mortgage interest on the farm home, and certain operating expenditures, leaving a balance which includes farm wages and most of mortgage interest payable. For the purposes of this statement, no attempt has been made to deviate from the generally accepted definition of farm income in conformity with the definition of national income. It should, however, be noted that the deductions from gross income made to obtain net farm income (in table 1) are greater than the deductions made to obtain the agricultural contribution to the national total (in table 2).

The share contributed by agriculture was 18.9 percent in 1909 and 16.0 in 1914. In 1918 and 1919 it rose to 20.5 percent, then declined abruptly to 12.6. In the period 1926–29 the share ranged between 10.4 and 11.0 percent, and then reached the historic low of 7.5 percent in 1933. By 1934, if benefit payments and receipts from the excess sale of livestock in the drought areas are taken into account, it reached 10.2 percent.

The farmer's share of the national income has of course declined during the past century as the percentage of people living on farms or engaged in agriculture declined. It is, therefore, not surprising that the agricultural share of or contribution to the national income was lower in the post-war period than in the 1910–14 period. But during the post-war period it was abnormally low as appears to have been the usual tendency in periods of generally declining prices.

In 1870 when those employed in agriculture constituted 53 percent of the total working population, farmers received about 30.5 percent of the national income. In 1900 when 38 percent were gainfully occupied in agriculture, agriculture's share of the national income was about 21 percent and in 1920, when 26 percent of the gainfully occupied were in agriculture, their share of the national income was about 17 percent. The yearly percentages from 1909 to 1934 are given in table 2 and in figure 3.

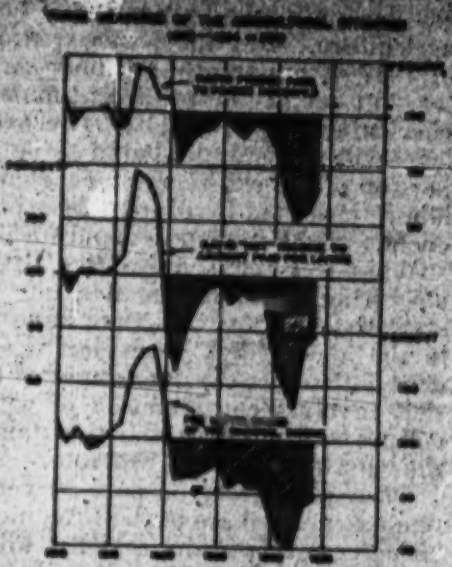

FIGURE 2.—The relative purchasing power of farm products (when benefit payments are included) and of the farmers' "net" income, as well as the farmers' per capita share of the national income were about 80% of their pre-war level in 1934, though they differed widely in earlier years.

These trends, since 1900, are shown in figure 3. In a somewhat modified form, the relation between the income share and the population share is shown in figure 2 as derived from table 3. Here the farmers' share of the national income has been computed on a per capita basis instead of on the basis of gainfully occupied. The per capita farm income included in the national total was divided by the per capita income for the entire population and then expressed as percentages of the 1910–14 average. In 1909, the per capita income for the entire population of 90,000,000 was $294, and for the farm population of 32,000,000, $155 or 53 percent of the average for all.

THE FARMERS' SHARE OF THE NATIONAL INCOME AND PERCENT GAINFULLY OCCUPIED IN AGRICULTURE

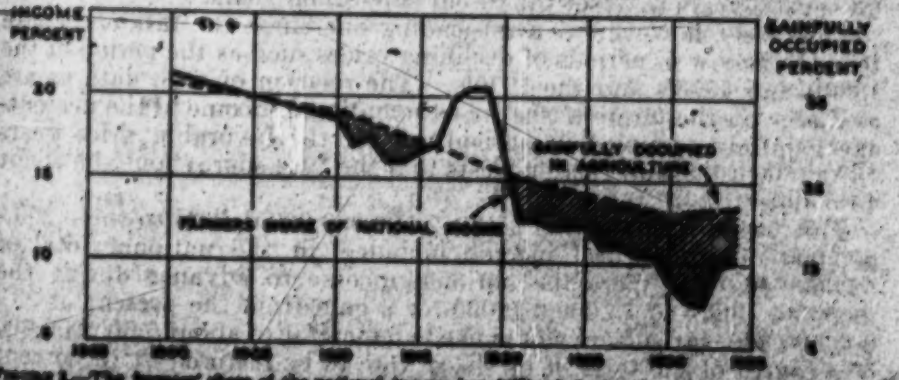

FIGURE 3.—The farmers' share of the national income has declined during the past century as the farm population and the number gainfully occupied in agriculture represent a smaller proportion of the total. After the war, the farmers' share of the national income fell to an abnormally low level and has been only partly restored by the 1933 and 1934 agricultural improvement.

In 1933 the average for the entire population of nearly 125,000,000 was $385 and for the 31,000,000 of farm population, $115, or 30 percent of the average for all. The per capita share of the farm

population rose to 123 and 134 percent of the pre-war share, declined to about 90 percent and by 1934 it advanced to 79 percent.

The share going to agriculture should have declined, in view of the decline in the proportion of our working population engaged in agriculture. But the post-war drop from the relatively high levels of 1917–19 apparently not only carried the farmers' share down too far, but set in motion a continuous decline at the subnormal level, checked only by the 1933–34 recovery. The relatively low post-war level will probably be found to be related to the increase in the proportion of the consumers' dollar going to distribution costs including labor, particularly in the case of livestock products, and to the decline in the foreign demand for our export crops.

What is a fair share of the national income for agriculture? In answering the question of a fair share for agriculture, we need to start with the facts as they have prevailed in the past decades and in the more recent years, but it should be borne in mind that this does not answer the question as to what should be the farmers shares; that involves consideration of what type of balance between agriculture and industry and the standards of rural and urban life that the country desires to promote.

Our records for the past 80 years or more show that agriculture tends to get a share of the total income which is approximately about 60 percent of the share of the total working population engaged in agriculture. A number of reasons may be given in explanation of this historic fact, such as nonmonetary forms of income enjoyed by farmers, a willingness to take a smaller return for a greater degree of individualism, and a greater degree of economic security in periods of general depression and a lack of effective bargaining power.

On the basis of the experience of post-war years, during which agriculture as a whole had failed to keep pace with general prosperity, the 1934 share instead of being 10 percent should perhaps be around 12 to 13 percent, or about 25 percent higher than at present, assuming that agriculture is not entitled to something more than average for several years to offset the recent subnormal years.

This basis, however, is a misleading one since the farmers' share tends to be low in periods of declining prices such as the period of the 1830's and 1890's and the 1930's. The relation of such data as are available on the farmers' share of the national income to the percentage gainfully occupied in agriculture for the favorable price years 1870, 1900, 1910, and 1920 suggests that the 1934 share should be about 15 percent.

This would mean adding about 2,500,000,000 dollars to the 5,200,000,000 of agricultural income included in the national total of 52,000,000,000. Were the national income to advance during the next few years to 75,000,000,000, or a gain from the present of 23,000,000,000, agriculture would need an increase of about 6,000,000,000 or a fourth of the total, if its share were to be restored to 15 percent instead of the present 10 percent.

THE THREE MEASURES OF THE AGRICULTURAL SITUATION COMPARED

The indexes of the purchasing power of farm products and of the farmers' net income, as well as of the farmers' per capita share of the national income (shown in fig. 2) each reveal the failure of agriculture to recover from the 1921 depression, before it was overwhelmed by the

depression after 1929. The exchange value of a unit of farm products on the whole varied less from 1910 to 1930 than did the other two indexes; it rose only about half as high as did the purchasing power of "net" income or the per capita share. It did not show the sharp decline in 1920 that appears in the other two indexes. In 1932 it reached 18 percent below the pre-war level, while the purchasing power of net farm income reached 35 percent below.

During the period 1923–29, the relative purchasing power of farm products averaged about 95 percent of pre-war, the purchasing power of net income about 93 percent, and the per capita share about 88 percent. As in 1920, the last two indexes also showed pronounced declines in 1930, compared with only a moderate decline in the index of purchasing power of farm products. By 1933, two of the measures averaged only 60 percent of pre-war, while the index of purchasing power of net income averaged 52 percent. By 1934, each showed advances to somewhat under 80 percent of the pre-war level.

On the mechanistic basis of action and reaction, the farm prosperity of the years 1915–19 was about offset by the subnormal conditions during the post-war years 1920–27. The subnormal conditions that have prevailed since 1927, and in intensified form since 1930, call for a period of several years of agricultural prosperity well above the pre-war levels.

To attain such conditions farmers must look forward to (1) balancing their production as between the several branches of agriculture so as to undo the damage done by the 1934 drought; (2) an increase in industrial production as a basis for increased city purchasing power and a larger exchange value of farm products for industrial products, the latter to be brought about either by a rising level of farm prices, or a declining level of industrial prices or a combination of the two; (3) reopening our foreign markets for wheat, cotton, and pork, and increasing foreign purchasing power for the other farm products we export; (4) lowering those costs of distribution which now take an inordinate share of the spread between farm and city retail prices.

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CORN BELT FARMING IN 1935

With the approach of spring, Corn Belt farmers are still struggling with the effects of last year's unexpected emergencies and wondering what 1935 has in store for them. The problems of 1934, including drought, insects, and price trends, may not take the same form in 1935, but farmers may be assured that 1935 will also bring its difficult situations. Some of these problems will be revealed only with the passing of time. Others can be dimly foreseen through the medium of past experience under similar conditions. Present circumstances dictate largely the range of expectations to be entertained in 1935.

The opportunity to increase corn acreage and feed crop acreage 25 percent or more above 1934 [illegible] makes possible a more efficient use of farm resources, including labor, machinery, and equipment. [illegible] to obtain a specified volume of production, a larger share of the crop are not increased by moving the actual output from 75 percent to 90

purchase of their volume. This advantage to farmers of a reduction of production comes for the most part from an increased sales price rather than from decreased costs of operation.

The effects of the 1934 drought will loom large at the beginning of the 1935 crop year. The shortage of feed in areas during the winter months. The coming of grass will help mightily, especially in the case of cattle. The growing of an increased acreage of small grains, accompanying the 10 percent corn acreage reduction from the 1932-34 base in corn contract farms, will be helpful in making more feed grain available early in the summer. This will be especially useful in providing feed for hogs and horses until the new corn crop matures.

The failure to obtain stands of grass from last year's seedings will make it necessary to use more land for emergency hay and pasture crops. Soybeans, oats, sudan grass, rape, and other emergency crops will be used extensively for these purposes. As was true in 1934, it is probable that more corn fodder than usual will also be fed in the winter of 1935-36 to meet the shortage of the better roughage still to be felt as a result of the drought of 1934. On account of the very small supply of grass seeds available for seeding in 1935, the full effects of this drought on the roughage situation will not be overcome until 1937 at the earliest.

Farmers in the Corn Belt in 1935 will be faced with widely varying relationships between feed and livestock prices. Feed scarcity in 1934 reduced the number of bushels of corn equal in value to 100 pounds of live hogs, at farm prices, to less than two-thirds of the long-time average relationship between corn and hog prices. Spring pigs farrowed in 1934 were 23 percent fewer than in 1933, but corn production was 41 percent less; hence, corn prices rose more than the price of hogs.

This situation is gradually changing. There were only slightly more than one-half as many fall pigs farrowed in 1934 as in 1933 and intentions of the 1935 spring pig crop suggest a 17 percent reduction from last year's short farrowings. Rising hog prices in the late winter have brought up the hog-corn price ratio almost to the long-time average. The expected further increase in hog prices in the late summer will probably cause the hog-corn price ratio, on a farm value basis, to exceed the normal figure of 11.5. With a yield per acre of corn in 1935 approaching the average of past years, it would appear that the increased corn supply and greatly reduced number of livestock would cause the hog-corn price pendulum to swing sharply in the direction of higher hog prices, as expressed in terms of corn prices. This tendency will be [illegible] somewhat if corn prices are stabilized by [illegible] have nearly adjusted to the need for corn by [illegible] in the following year.

[illegible] in the number of cattle in 1934 makes nearly [illegible] for several years. In the worst drought [illegible] the breeding herd has been maintained and it will be [illegible] foundation stock at relatively high [illegible] Some cattle must have necessarily [illegible] carry them through the winter. [illegible] and cheaper feed will still relief to many [illegible] to reduce his herd at low prices in the [illegible]

Some caution may need to be exercised by buyers of feeder cattle next fall if average yields of corn and other feed crops are restored, corn supplies and but few hogs to eat in the dry lot. Such buyers may easily drive the purchase price above that justified by the prospective demand for well-finished beef. It will be necessary to be more than usual for the cattle feeder currently to appraise the factors affecting the sales price of fat beef at the time his cattle will be ready for market rather than to be influenced too much by the price of well-finished cattle at the time he buys his feeders.

The production of dairy products in the Corn Belt was not reduced by the drought than was true of the gains on meat animals. The government buying program of 1934 was successful in weeding out the least desirable cows from the dairy herd; production per cow will probably be increased in 1935, especially if increased rainfall brings abundant pasturage for the smaller number on hand. Due to the general failure of clover stands, it will be more important for the dairyman than for the beef cattle grower to sow an emergency hay crop of good quality. It is fortunate that a large crop of soybeans is available for seeding in 1935 when the supply of most grass seeds has been so seriously reduced.

Chinch bug damage in the southern part of the Corn Belt in 1934 may be even more serious than in 1934 unless weather conditions are distinctly unfavorable to their increase. Knowledge gained last year by farmers who were experiencing them for the first time will be very valuable in combating them in the coming season.

For all classes of livestock the keynote of 1935 should be the maintenance and building up of breeding herds. Where there is a choice, the fattening of livestock should be limited rather than to sacrifice foundation stock. Where practically no feed is available, a high wintering outlay for purchased feeds may be justified by the high prices for livestock in the next 2 years.

George W. Conner,
Division of Farm Management and Costs.

THE GRAIN MARKET SITUATION

Domestic grain markets were unsettled in January, with price gains early in the month more than offset by declines later in the period. Diminishing supplies with light receipts were strengthening influences in wheat but these were largely offset by weakness in foreign markets where increased offerings of new Southern Hemisphere crops competed for the limited export trade. The seasonally light remaining stocks of feed grains maintained prices at relatively high levels and placed corn, oats and barley again on an import basis, with the result that domestic market conditions became increasingly important influences in the domestic situation.

[illegible] figures above January 1928. [illegible]

mill and elevator stocks or supplies in merchant mills, but trade estimates placed the quantity of wheat in these positions about 45,000,000 bushels under a year ago, which would suggest that total supplies of wheat in the United States are 125,000,000 to 150,000,000 bushels below those at this time last season.

Domestic utilization of wheat this season appears to be slightly above that of a year ago. Mills have ground more wheat and trade reports indicate increased feeding of wheat as a result of higher feed grain prices. Exports of wheat as grain have amounted to less than 3,000,000 bushels and have been more than offset by imports of Canadian wheat. Durum mills have been forced to turn to Canada for supplies of high protein durums. About 7,500,000 bushels of Canadian durum wheat had been imported to the close of December. More than 3,000,000 bushels of Canadian feed wheat had been brought in with the payment of the ad valorem duty of 10 percent. This feed wheat was being offered at Minneapolis, the middle of January, at around 90 cents per bushel delivered at that market.

With United States prices on an import basis, the world situation has become an increasingly important influence. World supplies of wheat are materially smaller than a year ago, reflecting principally the short 1934 crops in the United States and Europe. Despite the reduction of around 285,000,000 bushels in European crops, demand for wheat from exporting areas has remained dull and world shipments have fallen below those of last season, when they were the smallest since the war period. Southern Hemisphere countries competed actively with Canada for the limited export trade. Argentina shipped out more than 175,000,000 bushels during 1934, compared with about 245,000,000 bushels during the previous year. Australia, however, shipped out less than 100,000,000 bushels, compared with about 150,000,000 bushels during the previous season. Canadian exports, including shipments to the United States, totaled slightly less than 100,000,000 bushels during the 5 months ending with December, compared with about 104,000,000 bushels during the corresponding months of 1933. As a result of the smaller shipments, materially larger stocks of old crop grain remained in the Southern Hemisphere at the first of January than a year earlier, while Canadian stocks were only about 10,000,000 bushels below the relatively large supplies on hand a year ago.

New crop wheat from Australia and Argentina is now being offered freely and the efforts of Southern Hemisphere exporters to dispose of this grain has been a weakening influence in world markets. Southern Hemisphere supplies for the current season, however, from present indications, will be around 50,000,000 bushels smaller than last season.

[illegible] FEED GRAINS DECLINE DESPITE REDUCED SUPPLIES

Feed grains declined during January despite diminishing supplies and continued light marketings. Prices have reached relatively low levels compared with prices of livestock and dairy and poultry products, and this together with lack of funds, particularly in drought areas, has greatly restricted the movement of grain this season. Domestic markets are on an import basis and foreign grain has begun to appear in appreciable quantities.

Farm stocks of corn at the first of January were the smallest in the 9 years for which records are available, and totaled only about 814,000,000 bushels. Market stocks totaled 43,750,000 bushels, giving a total supply at the first of January of only 858,000,000 bushels, or about the quantity usually on hand at the first of April. Remaining stocks when compared with supplies at the beginning of the season suggest a domestic disappearance, from October through December, of less than 580,000,000 bushels. During the corresponding period last year, about 920,000,000 bushels passed into domestic consumption. Should domestic requirements during the remainder of the season show a corresponding decrease, the carry-over at the close of the period would not be unusually small. Sharp reductions in the number of livestock on farms and the substitution of cheaper forage for feed grains have been principally responsible for the reduced domestic utilization of corn this season. The official estimate of livestock numbers at the first of January is not yet available, but the combined spring and fall pig crop of 1934 was about 36 percent less than that of 1933 and totaled only about 53,000,000 head, compared with 82,000,000 head a year earlier. The decrease in the Corn Belt States was somewhat larger than for the country as a whole.

Market receipts of corn remained exceedingly small during January, but industrial and feeder demand was also limited and prices lost much of the early month gains. Market stocks were drawn upon rather heavily and were reduced about 5,000,000 bushels during the first 3 weeks of January. Only about 38,000,000 bushels were in store January 19, compared with nearly 69,000,000 bushels a year earlier. Some Argentine corn has been received on the Pacific coast and it is estimated that about 5,000,000 bushels of old Argentine corn and around 7,000,000 bushels of new crop grain has been purchased for shipment to the United States. Old Argentine corn for February shipment was quoted delivered United States ports around the middle of January at 91-92 cents, and new crop grain for May and June shipment at about 81 cents per bushel. These offerings have tended to check the advance in domestic prices.

Oats markets have fluctuated along with corn, but were slightly lower at the close of the third week in January than at the first of the month. Farm stocks of oats as the first of January totaled only 348,000,000 bushels and with commercial stocks gave a total supply of only 370,000,000, compared with about 504,000,000 bushels a year ago. Domestic utilization from January to the close of the season last year totaled approximately 260,000,000 bushels. Although demand for oats is apparently below that of a year ago, the relatively small oat crop suggest rather close adjustment of supplies to requirements this season. Domestic stocks, however, are being supplemented by importation of Argentine oats. More than 5,000,000 bushels of Argentine oats had arrived at American ports to the middle of January. These oats are now quoted at about 53 cents per bushel at seaboard markets, which is 10 to 11 cents below prices of domestic grain at the same markets. On January 22, No. 3 white oats were selling at the principal central-western markets at 55-60 cents per bushel.

Barley markets weakened slightly around the middle of January, influenced by lower corn prices and only moderate demand for current offerings. Choice malting barley continued in good demand,

mill and elevator stocks or supplies in merchant mills, but trade estimates placed the quantity of wheat in these positions about 45,000,000 bushels under a year ago, which would suggest that total supplies of wheat in the United States are 135,000,000 to 150,000,000 bushels below those at this time last season.

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With United States prices on an import basis, the world situation has become an increasingly important influence. World supplies of wheat are materially smaller than a year ago, reflecting principally the short 1934 crops in the United States and Europe. Despite the reduction of around 235,000,000 bushels in European crops, demand for wheat from exporting areas has remained dull and world shipments have fallen below those of last season, when they were the smallest since the war period. Southern Hemisphere countries competed actively with Canada for the limited export trade. Argentina shipped out more than 175,000,000 bushels during 1934, compared with about 145,000,000 bushels during the previous year. Australia, however, shipped out less than 100,000,000 bushels, compared with about 150,000,000 bushels during the previous season. Canadian exports, including shipments to the United States, totaled slightly less than 100,000,000 bushels during the 5 months ending with December, compared with about 104,000,000 bushels during the corresponding months of 1933. As a result of the smaller shipments, materially larger stocks of old crop grain remained in the Southern Hemisphere at the first of January than a year earlier, while Canadian stocks were only about 10,000,000 bushels below the relatively large supplies on hand a year ago.

New crop wheat from Australia and Argentina is now being offered freely and the efforts of Southern Hemisphere exporters to dispose of this grain has been a weakening influence in world markets. Southern Hemisphere supplies for the current season, however, from present indications, will be around 50,000,000 bushels smaller than last season.

FEED GRAINS DECLINE DESPITE DIMINISHING SUPPLIES

Feed grains declined during January despite diminishing supplies and continued light marketings. Prices have reached relatively high levels compared with prices of livestock and dairy and poultry products, and this, together with lack of funds, particularly in drought areas, has greatly reduced the consumption of grain this season. Domestic markets are on an import basis and foreign grain has begun to arrive in appreciable quantities.

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Market receipts of corn remained exceedingly small during January, but industrial and feeder demand was also limited and prices lost much of the early month gains. Market stocks were drawn upon rather heavily and were reduced about 5,000,000 bushels during the first 3 weeks of January. Only about 38,000,000 bushels were in store January 19, compared with nearly 69,000,000 bushels a year earlier. Some Argentine corn has been received on the Pacific coast and it is estimated that about 5,000,000 bushels of old Argentine corn and around 7,000,000 bushels of new crop grain has been purchased for shipment to the United States. Old Argentine corn for February shipment was quoted delivered United States ports around the middle of January at 91-92 cents, and new crop grain for May and June shipment at about 81 cents per bushel. These offerings have tended to check the advance in domestic prices.

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Barley markets weakened slightly around the middle of January, influenced by lower corn prices and only moderate demand for current offerings. Choice malting barley continued in good demand,

THE DAIRY MARKET SITUATION

The butter situation is a principal point of interest this month. Except for two temporary set-backs, one in December and another in mid-January, the upward swing of butter prices which began in October has continued. Current domestic prices have already attracted some imports, principally New Zealand butter, and negotiations for further imports are pending, these imports being possible because prices in foreign markets are lower than domestic prices by more than the 14-cent tariff. High domestic prices are a reflection of relatively light production and a comparative shortage of supplies in storage, but just how high these prices may go will depend upon consumption and the extent to which foreign shipments are received.

Butter production in December was approximately 12 percent below December 1933, and the change from November was a reduction of 7 percent, rather than the usual seasonal increase of 4.5 percent. This marked drop can be attributed to the extreme shortage of hay and grain supplies which is becoming more acute as the feeding season advances. December is the first month this season during which production was curtailed so sharply as many had anticipated would occur after the drought. The December change suggests the reason why production was fairly well maintained during pervious months, namely, that farmers were probably drawing heavily upon such feed supplies as were available. There is a feeling that production will continue low during the balance of the current feeding season.

The report on estimated butter production in December shows that there were exceptionally sharp reductions under 1933 in Minnesota, Wisconsin, and Iowa. In a few scattered States there were increases. This group includes Illinois, Missouri, Oklahoma, Colorado, and Oregon. There was also a heavier production in Pennsylvania, but in New York there was a 75 percent drop. The net decrease in total United States output for the month was 13,500,000 pounds, and the estimate of 102,702,000 pounds produced was the lowest December production since 1929. Estimated total production for 1934 is 1,653,702,000 pounds, a decrease of 108,000,000 pounds, or 6.2 percent under 1933. Cheese production in December was 2,500,000 pounds, or 7.5 percent less than in 1933, although for the full year there was a 3 percent increase, amounting to 16,000,000 pounds. The only manufactured dairy product registering a gain in December over a year earlier was evaporated milk, which increased 10.6 percent, bringing the 1933 total just slightly above 1932.

On a milk-equivalent basis the combined December production of butter, cheese, and condensed and evaporated milk was 10 percent below December 1933 and total 1934 production was 4.5 percent less than the previous year.

The first signs of a falling off of consumption appeared in December. Taking into account the month's production, changes in storage stocks between December 1 and January 1 and such imports and exports as occurred, butter showed a reduction under December 1933, of 4.4 percent, cheese 6.3 percent, and condensed milk 9.3 percent. Evaporated milk increased 44 percent, although this figure does not necessarily represent the actual consumption change, since it is possible to measure changes in stocks only with respect to manufacturers. The increase in evaporated milk prices through an amendment to the marketing agreement which was approved

and became effective January 11, was anticipated in December, and it is quite possible that the increased trade output of evaporated milk was partly due to the replenishing of stocks by distributors before the price advance became effective.

Stocks of all classes of dairy products, except cheese, are far below those of a year ago. On January 1, the quantity of butter in storage was only 47,093,000 pounds, compared with 111,249,000 pounds last year on the same date, and a 5-year average of 61,054,000 pounds. Manufacturers' stocks of evaporated milk on January 1 totaled 155,166,000 pounds, whereas on January 1, 1934 a total of 210,407,000 pounds was reported. Stocks of American cheese, however, continued very heavy, amounting on January 1 to 89,846,000 pounds, an increase of 12,000,000 pounds over last year, and 23,000,000 pounds more than the January 1 5-year average.

The present wholesale price of 92-score butter at New York is 35½ cents (January 25), which is the highest point reached at any time since October 1931. In London, Danish butter is quoted at 23.3 cents, and New Zealand butter at around 18½ cents. With a difference of 17 cents per pound between New York and London, there is margin enough over the 14-cent tariff to attract imports. So far imports have been mostly New Zealand butter shipped London, although this week some 500 boxes were received at New York direct from New Zealand. The total arrivals of New Zealand butter approximate 2,600 boxes (145,600 pounds), and in addition approximately 350 casks of Danish butter (38,800 pounds) have arrived. Other shipments of New Zealand butter are reported due for arrival next week, and a further report is that a much larger shipment than has heretofore been received is scheduled to arrive the first week in March. Advances in wholesale prices have been followed by higher retail prices. In some of the large eastern cities, prices to consumers were raised 4 cents per pound during the week of January 21–26. Retail prices in New York City are now 41–43 cents per pound. Higher retail prices are said to have caused some shifting from the use of butter, although the extent to which this may have occurred is not known at the moment. This week's advance of cheese prices in Wisconsin makes primary market quotations the highest they have been since November 1930.

No butter purchases have been made by the Government recently. The last Government purchases were evaporated and dry milk. Evaporated milk purchased amounts to 37,619,000 pounds (864,800 cases), and deliveries are already being made on these contracts at quite a number of widely scattered points. Awards for dry milk cover 3,081,250 pounds, and deliveries will start shortly. Another point of interest in connection with Government activities is that several amendments have been approved to licenses in effect in fluid milk markets, whereby class I prices are advanced. The most important market thus affected is Chicago, where an increase of 20 cents per hundredweight became effective January 17.

L. M. Davis,
Division of Dairy and Poultry Products.

SUMMARY OF DAIRY STATISTICS

[Millions of pounds, milk equivalent]

PRODUCTION

Product	December			January to December, inclusive		
	1934	1933	Per cent change	1934	1933	Per cent change
Creamery butter	103	116	−11.8	1,654	1,763	−6.2
Cheese	31	34	−7.7	560	544	+2.9
Condensed milk	14	16	−12.5	223	211	+5.8
Evaporated milk [1]	94	85	+10.6	1,721	1,717	+0.2
Total milk equivalent	2,705	2,902	−2.9	44,602	46,695	−4.5

APPARENT CONSUMPTION

[Including production, changes in stocks and net imports or exports]

Creamery butter	127	143	−4.4	1,718	1,673	+2.7
Cheese	42	45	−6.3	596	563	+4.9
Condensed milk	16	17	−9.3	216	208	+3.7
Evaporated milk [1]	139	97	+43.9	1,738	1,574	+10.4
Total milk equivalent	3,637	3,708	−1.9	46,329	44,737	+3.6

[1] Case goods only.

THE EGG AND POULTRY MARKET SITUATION

The egg markets at the beginning of 1935 appear to be in a much stronger position statistically than a year earlier, and as a consequence have shown more than the usual amount of resistance to the normal January decline in price. Stocks of eggs in cold storage on January 1, this year, were about 11 percent smaller than on January 1, last year, and 35 percent smaller than the 5-year average. Receipts of eggs at the leading terminal markets, with the notable exception of New York, during the first 3 weeks of January did not equal those of the corresponding 3 weeks of last year by about 28 percent. At New York, however, receipts for this period were slightly larger than a year earlier. This latter situation is the result of relatively small stocks of eggs stored last spring at that point, so that within recent months considerable quantities of storage eggs have been shipped in from interior centers of storage to supplement stocks withdrawn from local storage warehouses.

The price trend of eggs in January is normally downward, although it is usually interrupted by temporary advances brought about by a shortage in the immediate available supplies. Usually by late January the reserves of storage eggs are exhausted, and with the trade once again on a fresh-egg basis, and the new into-storage season 6 to 7 weeks away, prices are quite easily influenced by the size of each day's receipts. At this time of the year, dealers prefer to work on a day-to-day basis. Any evidence of accumulation in supplies brings about an immediate decline in prices, while any shortage in supplies results in an advance in quotations.

So far this month prices have [illegible]
and seasonal decline. In fact [illegible]
they began to the earlier decline [illegible]
the demand, and supplies of [illegible]
movements over a large part of the [illegible]
ration of light collections from [illegible]
January 25, the best grades of [illegible]
Yolk are bringing 25 cents a dozen, [illegible]
quotations on the same date last year. [illegible]
cents. White Eggs are about 11 cents higher and
White Eggs, 9 cents. Very few storage eggs are [illegible]
for that are offered are quoted at an increase of 6 cents [illegible]

Production conditions in the general farm belt of the [illegible]
which supplies a large volume of eggs for the [illegible]
western markets, have not been very favorable [illegible]
drought last summer, and have become very low as [illegible]
A great many farm flocks were sacrificed last fall because of the high cost of
feed to carry them through the winter, and the production of those
remaining has been held down by inadequate feeding for a normal laying.
Layings per farm flock in that area on January 1, amounted to 15.6
eggs compared with 19.2 eggs on the same date last year, according to
the United States Crop Reporting Board. The average production
for the entire country on January 1 was 13.4 eggs per farm flock com-
pared with 16.0 eggs a year earlier. Production in the commercial egg
producing areas of the Atlantic seaboard and the Pacific coast appears
to be holding close to last year's levels, but the relative shortage produced
in these sections, while large, will not make up for the smaller production
in other areas. The number of hens and pullets of laying age in
farm flocks on January 1, this year, averaged 72.4 per farm compared
with 85.2 on January 1, last year, and 82.8 per farm for the 5 years of
1928-32. The general forecast for a smaller spring production this
year than last seems likely to be realized.

Shell eggs in storage on January 1, 1935, amounted to 647,000
cases compared with 731,000 cases on January 1 last year, and 909,000
cases for the 5-year average. Since January 1, practically all of the
shell eggs in storage on that date have been moved into consuming
channels. Frozen eggs in storage on January 1 amounted to 54,333,-
000 pounds compared with 61,419,000 pounds a year earlier and
66,567,000 pounds for the 5-year average. The small stocks of shell
eggs in storage on January 1, together with the light January fresh
egg production, will likely result in a sizeable reduction in frozen egg
stocks by February 1.

Developments of the last month give promise to some improvement
in the relation of egg prices to feed costs during the course of the
first 6 months of 1935. The prices of the expected smaller produc-
tion will likely be supported by a fairly good demand for storage
purposes, by an increased use by commercial bakeries, and by a
demand from breakers fully as strong as that of a year ago. With
the coming of spring and the grazing season, the number of hens
will prove of less importance to the average farmer whose flocks
obtain a part of their feed from the open range, although still an
important factor to the commercial producer who has to buy all
his feed.

The poultry markets in January for the most part held full steady to firm. The only class to display any weakness at all was live broilers. These were in generally heavy supply at most eastern markets, and quotations worked about 2 cents lower. The market on live fowl was slightly uneven, liberal receipts the first part of the month causing a 1- to 2-cent loss on heavy grades, but all this being regained toward the close as advancing egg prices caused a slowing up of farm marketings of old hens.

Receipts of dressed poultry at the 4 principal markets during the first 2 weeks of January were about 20 percent smaller than for the same period last year. As a consequence, stocks of dressed poultry in cold storage at these points decreased about 3,500,000 pounds compared with a decrease of only about 300,000 pounds a year ago. Prices of all classes of both fresh and frozen poultry held steady to firm, with quotations on fowl advancing 3 cents.

It now appears that the 131,752,000 pounds of dressed poultry reported in cold storage on January 1, 1935, will represent the peak for the into-storage season just ending. Usually the peak is reached on February 1. Although the stocks reported for January 1 were in excess of the 123,503,000 pounds on January 1, last year, and also the 119,495,000 pounds for the 5-year average, it is the consensus of opinion that due to the shortage of poultry now on farms these stocks will move into consumption without difficulty, and at considerably higher prices than received last year. The price of frozen broilers, however, may be affected to some extent during the first one or two months by the rather heavy supplies of live broilers which are expected. Commercial hatchings on the Atlantic seaboard of baby chicks for winter broilers were especially heavy, during October, November, and December, and receipts of broilers so far this year have been in excess of those of a year ago, and prices have ranged 2 to 3 cents lower. Stocks of frozen broilers in storage on January 1 were slightly over 2,000,000 pounds larger than a year earlier, but such stocks are generally being held rather closely in the belief that the supplies of live broilers may not be so liberal later in the season and that there will then be an opportunity to market frozen broilers at a more satisfactory level.

B. H. BENNETT,
Division of Dairy and Poultry Products.

BENEFIT, RENTAL, AND DROUGHT-RELIEF PAYMENTS TO FARMERS NOT INCLUDED IN OTHER SOURCES OF INCOME

	Cotton	Tobacco	Wheat	Hogs [1]	Corn-hog	Cattle [2]	Total [3]
	Million dollars	Million dollars	Million dollars	Million dollars	Million dollars	Million dollars	Million dollars
1933							
October	51	1		4			56
November	8		2	1			12
December	8		16				24
1934							
January	22		27				49
February	14		14				28
March	3		6				9
April	1	4	2				7
May	9	4	1		2		16
June	19	3	1		5	1	29
July	8	1	1		10	11	31
August	6	2	1		33	26	73
September	2		2		47	25	76
October	12		26		23	29	90
November	24	2	25		4	9	65
December	13	1	13		23	4	54

[1] Revised. For pigs purchased under emergency hog-reduction program.
[2] Purchased under drought-relief program.
[3] Total of all benefit, rental, and drought-relief payments made during month may not check exactly with sum of payments on individual programs.
[4] Includes sheep and goats purchased under drought relief program.

PRICES OF FARM PRODUCTS

Estimates of average prices received by producers at local farm markets based on reports to the division of crop and livestock estimates of this Bureau. Average of reports covering the United States weighted according to relative importance of district and State.

Product	5-year average, August 1909–July 1914	January average, 1910–14	January 1933	December 1934	January 1935	Parity price, January 1935
Cotton, per pound	cents	12.4	12.7	5.6	12.4	12.3	15.6
Corn, per bushel	do	64.2	58.6	19.1	64.8	65.2	69.6
Wheat, per bushel	do	88.4	88.4	33.6	96.6	99.2	111.4
Hay, per ton	dollars	11.87	11.87	6.68	13.26	14.09	14.98
Potatoes, per bushel	cents	69.7	64.2	37.4	43.4	45.1	67.2
Oats, per bushel	do	39.9	38.6	18.4	33.9	34.6	38.9
Beef cattle, per 100 pounds	dollars	6.21	6.04	3.88	2.98	4.05	4.88
Hogs, per 100 pounds	do	7.23	7.03	3.88	5.15	6.37	8.76
Chickens, per pound	cents	11.4	10.8	9.3	11.7	12.3	14.4
Eggs, per dozen	do	21.5	23.0	21.4	27.9	26.0	32.9
Butter, per pound	do	26.6	27.6	20.6	26.3	27.4	32.1
Butterfat, per pound	do	28.3	29.3	19.9	23.3	24.5	33.1
Wool, per pound	do	17.9	18.4	8.6	14.8	16.6	20.3
Veal calves, per 100 pounds	dollars	6.75	6.33	4.12	4.98	5.64	8.09
Lambs, per 100 pounds	do	6.97	6.79	4.99	5.61	5.82	7.78
Horses, each	do	142.90	138.60	62.60	101.60	97.60	178.60

[1] Adjusted for seasonality.

	88		99	101	100	73	
	106	179	117	114	116		
	104	177			116	86	
	104	176			116		
	103	176	117	114	116		
1964							
	105	179			117	81	
	107	179			119		
	106	184	121	119	120		
	107	183			120	88	
	108	183			121		
	109	182	123	121	121		
	109	181			122	90	
	112	186			125		
	113	182	123	129	126		
	113	181			126	93	
	113	186			126		
	112	185			126		

1930	104	113	101		103	93	104	102	96	102
1931	86	101	102		87	96	91	96	103	93
1932	103	87	94		86	103	100	100	100	100
1933	92	97	107		103	105	101	101	101	100
1934	102	88	91		113	104	106	101	106	101
1935	120	77	82		104	103	101	96	103	93
1936	126	119	100		130	103	116	113	124	95
1937	217	187	118		174	135	155	175	146	117
1938	227	245	172		206	163	186	202	170	115
1939	233	247	178		207	186	200	215	202	105
1940	232	248	191		174	198	228	211	201	103
1941	112	101	152		109	139	162	125	152	82
1942	106	156	174		114	145	141	152	149	89
1943	113	116	137		107	139	146	142	132	93
1944	126	212	125	150	110	149	148	142	153	94
1945	157	177	172	158	146	162	163	156	157	99
1946	131	122	136	142	147	152	160	148	158	94
1947	138	128	144	121	140	155	144	139	146	91
1948	130	152	176	150	151	158	153	149	155	98
1949	126	144	141	149	156	157	162	146	153	95
1950	100	102	102	140	133	137	126	126	145	87
1951	63	82	96	117	93	108	100	87	124	70
1952	44	47	82	102	62	83	92	66	107	61
1953	62	64	74	105	80	82	78	70	106	64
1954	92	92	100	104	96	96	89	90		
1953										
January	35	45	70	91	51	81	95	80	102	58
February	34	44	64	96	59	74	60	56	101	54
March	36	49	85	92	58	71	59	55	100	55
1954										
January	76	82	86	102	83	84	82	77	117	66
February	79	93	87	101	65	92	75	83	119	70
March	79	94	97	79	86	95	74	84	120	70
April	77	94	96	98	84	91	72	82	120	66
May	78	90	110	89	64	91	72	83	121	66
June	80	94	137	80	64	93	72	86	121	71
July	91	99	113	102	66	94	76	87	122	71
August	106	107	101	105	66	97	86	96	126	77
September	112	110	93	133	82	99	104	103	130	82
October	109	107	96	110	74	100	108	102	126	81
November	109	107	96	107	72	103	128	101	126	80
December	116	109	88	130	78	107	119	101	124	80
1955										
January	115	108	87	117	66	113	114	107	126	84

THE TREND OF EXPORT MOVEMENT

Compiled from the Department of Commerce reports by the foreign agricultural service division of this Bureau.

Year and month	Wheat,[1] including flour	Tobacco (leaf)	Bacon, hams, and shoulders	Lard[1]	Apples (fresh)	Cotton, running bales
	1,000 bushels	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 bushels*	*1,000 bales*
Total:						
1920	311,601	467,662	821,922	612,250	5,393	6,[illegible]
1921	359,021	515,358	647,680	368,942	5,809	8,[illegible]
1922	235,307	420,908	831,452	766,950	4,945	6,[illegible]
1923	175,190	474,500	828,890	1,035,382	8,876	5,[illegible]
1924	241,454	546,555	637,980	944,095	10,261	6,[illegible]
1925	138,784	488,471	467,459	688,829	10,043	8,[illegible]
1926	193,971	478,773	351,591	696,961	16,170	8,[illegible]
1927	228,576	506,252	297,720	681,303	15,584	9,[illegible]
1928	151,976	575,466	242,278	759,722	13,635	8,[illegible]
1929	154,348	555,347	275,118	820,328	16,856	7,[illegible]
1930	149,154	560,958	216,958	642,486	15,850	6,[illegible]
1931	125,686	503,531	122,246	568,708	17,785	6,[illegible]
1932	82,118	387,768	84,175	546,184	16,919	8,[illegible]
1933	28,611	420,418	100,180	579,132	11,029	8,[illegible]
1934	.....	418,983	88,725	431,238	.....	5,[illegible]
December:						
1920	30,877	45,391	83,276	90,080	1,509	
1921	15,217	38,772	36,848	64,542	569	
1922	16,728	36,954	65,642	78,596	859	
1923	13,358	49,269	76,263	98,578	962	
1924	24,616	44,384	33,788	76,803	1,073	1,[illegible]
1925	8,437	68,378	40,277	65,840	2,257	[illegible]
1926	15,301	50,379	23,508	62,680	2,479	1,[illegible]
1927	12,197	47,661	19,839	62,855	1,351	[illegible]
1928	12,053	67,587	18,886	80,358	1,993	1,[illegible]
1929	12,428	65,980	17,404	80,053	1,566	[illegible]
1930	6,903	58,435	10,466	45,114	3,384	[illegible]
1931	12,100	54,413	6,206	65,598	1,522	1,[illegible]
1932	3,549	28,910	6,347	49,919	1,144	1,[illegible]
1933	5,975	60,783	6,561	54,838	1,895	[illegible]
1934:						
January	5,548	25,783	4,965	51,202	2,556	[illegible]
February	4,039	27,571	7,012	36,908	2,166	[illegible]
March	4,732	45,024	7,206	39,493	1,029	[illegible]
April	5,432	39,857	5,280	39,350	357	[illegible]
May	2,725	30,512	7,702	66,167	35	[illegible]
June	1,418	27,799	8,137	41,008	9	[illegible]
July	2,168	17,626	11,572	33,466	127	[illegible]
August	3,818	23,630	8,769	29,358	201	[illegible]
September	2,190	30,620	4,902	31,506	343	[illegible]
October	1,966	61,606	5,235	26,870	634	[illegible]
November	1,986	45,284	7,589	19,732	984	[illegible]
December	.....	25,592	4,259	16,170	.....	[illegible]

[1] [illegible] [illegible] [illegible] [illegible]

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THE FARM REAL ESTATE SITUATION, 1932-33

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THE SITUATION IN GENERAL

Rapidly moving events in the farm real estate situation during the year 1932–33[1] brought further recessions in farm real estate values, greater frequency of distress sales of all kinds, a slight increase in the frequency of voluntary sales, an increase in the number of farmer bankruptcies, the highest farm population in history, further contraction of the flow of new mortgage credit, further development of cooperative adjustment plans between debtors and creditors, and a wide variety of relief legislation.

During the year 1932 prices of most of the important farm products reached the lowest points recorded during the depression. As measured by the Bureau indexes, cotton prices in June 1932 were only 37 percent of pre-war prices (August 1909–July 1914=100); grain prices in December 1932 averaged only 33 percent of pre-war prices; meat animals in the same month averaged 52 percent; fruits and vegetables in November 1932 and February 1933 averaged 57 percent; dairy products in March and April 1933 averaged 59 percent; and poultry products in March 1933 averaged 54 percent. Prices paid by farmers declined, also, but not in proportion to the prices of farm products. Declining from 152 in 1929, prices paid

[1] The real estate year ordinarily covers roughly a 12-month period ending about Mar. 1. Possession of farms by lease or sale is commonly given at that time, and occupancy usually is considered as beginning on that date. Unless otherwise stated, therefore, the term "1932–33" denotes the 12-month period ended on or about Mar. 1, 1933. Most of the real estate data here used pertain to that period. Other data are available for the calendar year only. The term "1932" denotes the calendar year ended Dec. 31, 1932.

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for commodities used by farmers averaged 107 percent of the pre-war level (1910–14=100) for the year 1932, and reached 100 percent in March 1933. For 1931 the index was 124, and in 1930 it was 144 percent of the pre-war base. Accordingly, the ratio of prices received by farmers to prices paid declined further, and in June 1932 reached 48 percent.

Gross income from farm production during 1932, estimated by the Bureau at $5,143,000,000, reached the lowest level in the available statistical record. This was a billion dollars less than in 1909; less than half the 1924–29 average, and 26 percent below that of 1931. Operating expenditures other than labor declined to $1,351,000,000, in comparison with $1,921,000,000 for 1931, and with $2,824,000,000 in 1930; and cash wages to hired labor amounted to $380,000,000 as compared with $587,000,000 and $809,000,000 in 1931 and 1930 respectively. Some reduction in taxes and interest also occurred, but not in proportion to the reduction in gross income.

In accomplishing these reductions in expenditures, farmers have curtailed their purchases sharply, particularly their capital expenditures. The Bureau estimates indicate that farmer's capital expenditures amounted to about $218,000,000 in 1932, which is about one quarter of the 1924–29 average.

It was inevitable that farm real estate values should decline further. During the year 1931–32 the index [2] of estimated value per acre of farm real estate [3] for the United States as a whole, based on reports from crop correspondents [4] to the Bureau of Agricultural Economics, declined 16 points, from 89 to 73. (One point on the index equals 1 percent of the average value per acre for the 3 pre-war years, 1912, 1913, and 1914.) The United States average value per acre of farm land and buildings, as measured by the Bureau index, is lower than at any other time in the available record, which began in 1912.

During the decade 1920 to 1930, the index for the country as a whole dropped from 170 to 115, or 32 percent from the peak. Most of the decline occured in the early years of the decade, values having leveled off considerably in the latter part. During the 3 years, 1930 to 1933, the index dropped from 115 to 73, a decline of 37 percent. On an average, United States farm real estate values as of March 1, 1933, were approximately one quarter below the pre-war base and somewhat more than one half below 1920 values.

Calculated as a percentage of values in the preceding year, rather than as a percentage of the pre-war base, the average decline in values during the year was approximately 18 percent, in comparison with 16 percent in 1931–32, 8 percent in 1930–31 and 1920–21, and 11 percent in 1921–22. In all but 7 States the index of values in March

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[2] Preliminary State estimates of changes in values are published annually in the May issue of Crops and Markets.

[3] The term "real estate" as used throughout this circular includes the land and buildings and other permanent improvements.

[4] In view of the small number of bona-fide sales occurring in many sections of the country during recent years, a possible bias toward holding prices may exist in the estimates of value obtained in this survey. Correspondents continue frequently to mention that voluntary sales are too few to establish much of a price base. Even though the estimates may thus require confirmation by subsequent actual voluntary sales, their trend should be significant. Estimates would seem to be prerequisite to the bids and offers out of which sale prices are made.

1933 was below the pre-war base, 4 of the 7 States having been in New England.

Although farm real estate values have declined seriously during the last 2 years, averaging 31 percent for the whole United States, it is worth while to recall that they have not been singular in this regard. Well-recognized indexes of stock prices have shown greater declines in the last 2 years than have farm real estate values. Even some bond indexes have declined as much or more. For example (*16*)[1] 351 industrial stocks declined 63 percent from March 1931 to March 1933; 37 public-utility stocks dropped 65 percent in the same period; and 33 railroad stocks declined 74 percent. A well-known index of industrial bonds was 44 percent lower in March 1933 than 2 years earlier, an index of high-grade railroad bonds was 20 percent lower, and an index of public-utility bonds was 18 percent lower. Although there are several important differences between these securities and farm real estate, it is evident that the general order of the declines in farm real estate values has not been greater than in the case of a substantial amount of other investments.

Land turnover, or changes in farm ownership for the country as a whole, showed a pronounced increase during 1932–33 in the volume of all forced sales and related losses of title through financial default (table 12). The weighted average rate for all classes of such transactions for the country as a whole was 54.1 per 1,000 (that is, on an average, out of each 1,000 farms, 54.1 farms went through foreclosure, tax sale, sale in bankruptcy, or other such loss of title). This rate represented an increase from the 41.7 reported for 1931–32, and is the highest point in the Bureau's record, which began with the 12-month period ended March 15, 1926. The corresponding national average for 1930–31 was 26.1 farms per 1,000; for 1929–30, 20.8; and for 1928–29, 19.5.

Excluding the tax-sale classification, the frequency of involuntary transfer (principally deeding back and mortgage foreclosures) increased during 1932–33 to 38.8 farms per 1,000 from the 28.4 indicated for the previous year. Plantations and ranches are considered as farms in these computations. In neither tax sales nor other types of forced sales are all the transfers of ownership indicated by these figures necessarily irrevocable. The laws governing such procedures in the various States customarily provide a period of redemption, during which, under certain conditions, the former owner may redeem his property. Moreover, there have been changes in the laws of various States in respect to these matters during the year, and the effects of these changes cannot yet be fully appraised. In many cases of mortgage foreclosure the former owner probably remains on the farm as a renter or may enter into an agreement for the repurchase of the place. In certain cases of tax sales, also, the former owners apparently have been allowed to remain.

Voluntary sales have been reported as somewhat more frequent in a number of regions. (See table 12.) The average rate for the United States was 16.8 farms per 1,000 for the year ended March 15, 1933, as compared with 16.2 for the previous year. Owner-operators who have not been pressed to sell are not generally disposed to offer

[1] Italic figures in parentheses refer to Literature Cited, p. 66.

their farms at present prices. Loan agencies are selling farms acquired through foreclosure as occasion offers, some of them having increased their sales in 1932 markedly over those of the preceding year.

In nearly all States the relative declines in values from a year ago were large. In the East North Central States real estate values averaged 15 percent below those of a year ago, and in the West North Central States, 21 percent below. The relative decline within the regions, however, varied from 12 percent in Indiana and Wisconsin to 18 percent in Illinois and from 10 percent in North Dakota to 27.5 percent in Iowa.

On the whole the frequency of voluntary sales in both these regions declined slightly during the year, but in Minnesota, Missouri, and South Dakota slight increases were reported. Forced sales as a result of delinquency on debt service increased in each of these States, whereas sales as a result of tax delinquency increased in some and decreased in others.

The Southern States, too, reported large mark-downs in values during the year, but, of course, there was variation from State to State. Values in West Virginia, for example, were 9 percent lower than those of the previous year, whereas those in North Carolina were 25 percent lower. In the East South Central States declines ranged from 14 percent in Alabama to 21 percent in Mississippi, and in the West South Central States they ranged from 14 percent in Louisiana and Texas to 23 percent in Arkansas.

Voluntary sales were reported as having been more frequent in a majority of the Southern States, and the average for each of these three geographic divisions was a little higher than the previous year. Forced sales as a result of debt delinquency were higher than during the previous year in every Southern State except Maryland and Virginia, and tax sales were more frequent in each State except Maryland, South Carolina, Kentucky, Arkansas, and Texas.

Values in the Western States continued to decline. For California and Oregon the Bureau index was 18 percent lower than last year, and in Washington it was 19 percent lower. Declines in the Mountain States varied from 13 percent in Arizona to 21 percent in Idaho.

Some of the Western States reported increased voluntary sale rates, others reported decreased activity, and the same is true of both tax sales and other forced sales.

Values in all the New England and Middle Atlantic States averaged lower than for the previous year, although in general the declines were less severe than in the remainder of the United States. The greatest relative declines in these regions were in Maine and Pennsylvania. On the whole, voluntary sales increased slightly in the Middle Atlantic States and decreased slightly in New England. Tax sales and other forced sales increased somewhat in both regions.

The latest available data concerning the number of farmers discharged in bankruptcy proceedings show increases for the year ended June 30, 1932, when 4,849 cases were concluded, as compared with 4,023 for the previous year. Prior to the year ended June 30, 1932, the trend in farmer bankruptcies has been downward since 1925. Increases in the number of farmer bankruptcies were reported in 31 States, decreases in 16, and 1 State reported no change. The

proportion of all bankruptcies represented by farmers increased to 7.7 percent from the 6.7 percent for the year ended June 30, 1931.

Farm population reached the all-time peak of 32,242,000 on January 1, 1933, according to estimates of the Bureau of Agricultural Economics. This is a striking increase from the 30,169,000 on January 1, 1930, which was the smallest number of persons on farms for at least the two preceding decades. The increase during the 3 years has been largely due, aside from the natural increase, to the smaller number of persons leaving farms for urban centers. The number of persons moving from city to country during 1932 was smaller than in 1931.

The shift in population has been reflected to some extent in an increased demand for farms to rent, in the purchase of farms, in "doubling up" in homes of farm families, and in the occupation of a large number of formerly abandoned homesteads, shacks, and buildings that would provide shelter. The movement has resulted in an increase in the number of persons directly dependent upon some type of agriculture, without a proportionate accompanying flow of capital. The effect of the movement upon farm real estate values has consequently been very meager, on the whole, and insofar as it has been effective, has cushioned the decline, rather than brought about an increase in values. The earning prospect of farm real estate continues to be the principal determinant of values.

The credit side of the farm real estate situation has been characterized by continued difficulties in repayment of credits previously obtained, and by the smallest volume of new credit extended in many years. Maturing loans have met with pressure for reduction as a condition of renewal, and both new and renewed loan contracts to an increasing extent have carried provision for payments on principal during the life of the loan.

It has not been possible, however, to reduce debts as rapidly as real estate values have declined, and consequently there has been an increase in the proportion of mortgaged farms having high ratios of debt in relation to the new values. There have consequently resulted an increased number of forced sales, as noted earlier, despite the further developed tendency among creditors toward postponement of payments and of leniency toward borrowers who were making sincere efforts to meet the requirements of creditors.

The distressed conditions in agriculture deriving from the low level of income, and especially from the increasing number of foreclosures and tax sales were, of course, largely responsible for the demand for various types of relief.

Several States modified their laws or regulations respecting collection of real estate taxes. Extension of penalty date, legalization of paying taxes in installments, extension of the redemption period, and modification of penalties are among the changes adopted. Concerted efforts looking toward tax reduction have been continued.

Increasing tension as a result of mortgage foreclosures brought about gubernatorial declarations of moratoria on foreclosures in some States. The legislative response to appeals for relief has varied from State to State, but among the proposals receiving legislative approval have been the extension of the redemption period, the ban-

ning of deficiency judgments, and the mandatory continuing of foreclosure actions. Some of the measures enacted have since been declared unconstitutional, and the constitutionality of some others may be questioned before the adjustment period is completed.

Federal interest in the situation has been evinced through the subscription by the United States Government of additional funds to the Federal land banks; by further extension of Federal credit to agriculture; through the enactment of legislation facilitating the composition of creditors' claims and the devising of compromises between debtors and creditors; and since March, through the undertaking of extensive plans to raise agricultural prices, to restore business activity generally, and through the reorganization of Federal credit activities as they relate to agriculture.

The year 1932–33 has been one in which much attention has been directed to the problem of arriving at a workable relation between debts and income. The impossibility of paying debts contracted at a higher price level with income at a much lower level, together with the necessity of cooperation between all parties has been more generally recognized, but the final working out of the situation will take time, and the policies facilitating eventual adjustment will of course be modified in the light of experience and subsequent economic developments.

FARM REAL ESTATE VALUES

VALUES DECLINED FURTHER, REFLECTING LOWER INCOMES

The year ended March 1, 1933, witnessed the decline of farm real estate values for the country as a whole to a level 27 percent below that of the pre-war period, 1912–14. The Bureau's index of estimated value per acre of farm real estate as of March 1, 1933, was 73 percent of the pre-war base (table 1 and fig. 1). During the 12 months, values declined 18 percent from their position at the beginning of the year. In only 2 recent years have such wide-spread and drastic declines occurred—during the year ended March 1, 1922, when the Bureau index declined 11 percent from 157, and during the year ended March 1, 1932, when it declined 16 percent from 106. As measured by the Bureau index the relative decline in farm real estate values from 1930–33 was greater than during the whole decade, 1920–30, the relative decline during the 10-year period having been 32 percent, and during the last 3 years 37 percent. When it is considered that values of 1920 had been reached as the climax of a land boom, the devastating effects of the last few years are strikingly apparent.

Region by region, State by State, farm real estate values have fallen as a result of the vicious circle initiated by declining incomes, namely, delinquent obligations, declining values, forced sales, and further declining values.

The greatest declines from a year ago were reported from the West North Central States, where the Bureau index (1912–14=100) declined from 81 to 64, a decrease of 21 percent. Declines during the year in individual States of this region ranged from 10 percent in North Dakota to nearly 28 percent in Iowa.

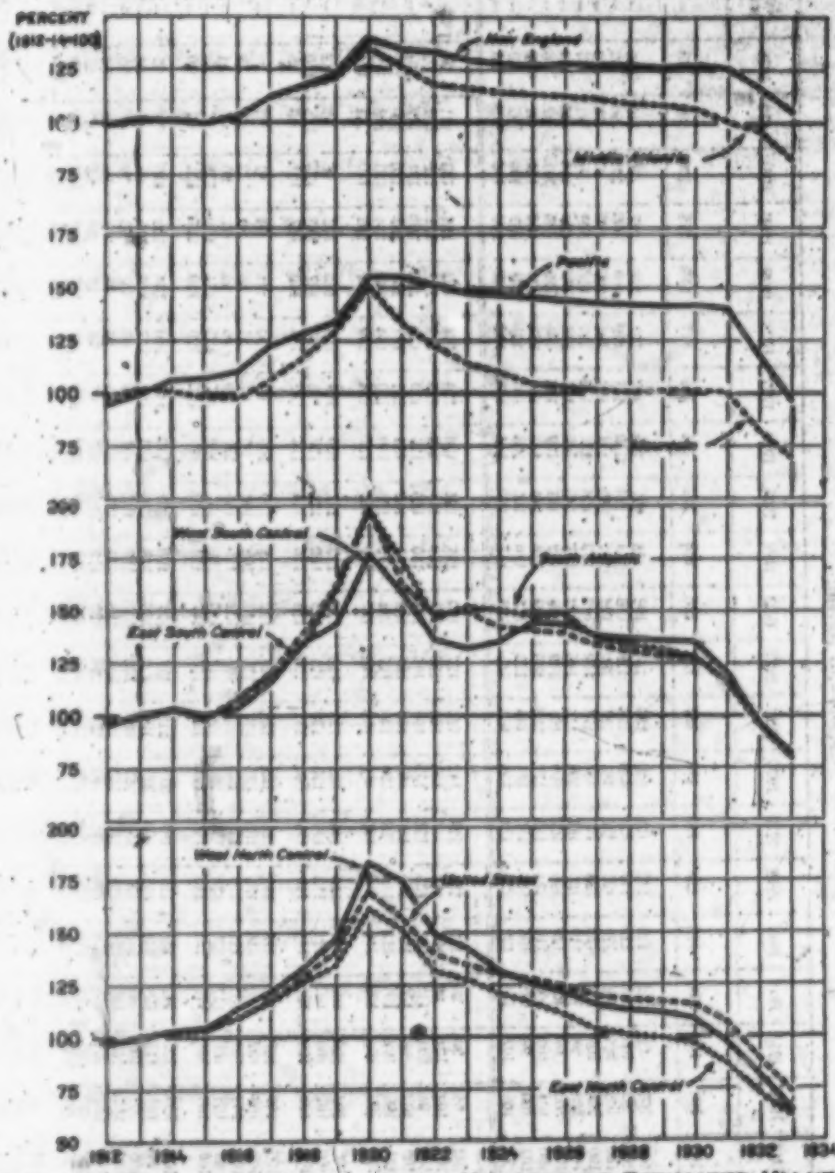

FIGURE 1.—FARM REAL ESTATE: INDEX NUMBERS OF ESTIMATED VALUE PER ACRE, AS OF MARCH 1, BY GEOGRAPHIC DIVISIONS, 1912-33.

Further declines in farm real estate values occurred during the year 1932-33. In only seven States were average values as of Mar. 1, 1933, higher than pre-war. During the decade from 1919-20 to 1929-30, the average value per acre of farm real estate, as measured by the Bureau index, declined 32 percent, but during the 3 years 1930-31 to 1932-33, it declined 37 percent.

TABLE 1.—*Farm real estate: Index numbers of estimated value per acre, by geographic divisions and States, 1912–33* [1]

(1912-14=100 percent)

Geographic division and State	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	Net change over 1912 [1]	
																								Per ct.
United States	97	100	103	103	106	117	130	140	170	157	150	155	150	147	146	139	139	136	116	100	80	73	−16	−18
Geographic divisions:																								
New England	96	101	103	99	102	113	117	130	140	135	134	130	128	127	125	127	127	126	127	126	116	106	−11	−9
Middle Atlantic	98	100	102	100	104	112	117	121	136	127	118	116	114	114	113	111	110	109	106	101	90	82	−16	−15
East North Central	97	100	103	104	110	116	127	136	161	161	152	136	121	116	111	104	101	100	96	87	73	63	−11	−15
West North Central	97	100	103	106	114	122	134	147	184	174	160	142	122	126	121	115	113	112	102	97	81	64	−17	−21
South Atlantic	98	100	103	98	108	119	135	161	188	174	146	133	131	148	149	137	134	132	126	116	98	80	−18	−17
East South Central	97	100	103	99	109	120	140	162	189	169	149	140	142	141	139	138	130	130	126	117	97	79	−18	−19
West South Central	96	100	104	100	108	119	134	143	177	160	136	132	136	144	144	139	137	135	126	121	97	82	−15	−15
Mountain	98	102	100	98	98	106	117	120	131	123	122	115	110	106	103	101	101	101	102	100	82	65	−13	−16
Pacific	94	99	106	107	111	123	130	134	146	146	151	148	147	146	144	143	143	143	142	140	119	96	−23	−19
New England:																								
Maine	100	102	98	98	98	110	118	134	148	138	137	130	127	124	126	124	126	123	124	123	111	94	−17	−15
New Hampshire	97	101	102	101	98	108	111	116	129	128	120	111	109	111	113	112	112	111	111	110	102	93	−10	−10
Vermont	101	101	98	104	115	127	130	136	140	140	145	134	130	126	126	126	126	126	126	121	113	101	−11	−10
Massachusetts	96	100	102	98	100	110	114	118	140	134	134	132	131	133	134	131	131	131	130	130	112	104	−8	−7
Rhode Island	100	101	100	102	106	113	116	128	130	130	127	126	126	128	130	133	134	134	134	132	126	118	−8	−7
Connecticut	98	100	102	100	102	110	116	126	137	134	140	137	140	137	137	136	136	136	140	140	123	124	−9	−7
Middle Atlantic:																								
New York	98	100	103	100	103	109	116	118	133	128	116	115	112	111	109	108	106	106	103	96	93	93	−10	−11
New Jersey	98	100	102	100	102	111	116	119	130	126	121	115	120	124	120	120	127	127	126	122	116	110	−8	−7
Pennsylvania	98	100	103	100	105	114	119	124	140	131	120	118	116	114	114	112	111	110	107	101	90	78	−18	−19
East North Central:																								
Ohio	98	100	102	107	113	119	131	138	159	154	134	122	118	110	106	99	96	94	90	82	73	59	−11	−16
Indiana	97	100	103	102	110	116	126	135	161	148	120	116	106	102	96	87	84	80	80	72	62	53	−7	−13
Illinois	97	100	103	102	105	111	119	130	160	153	136	122	116	115	109	99	96	96	91	80	66	54	−13	−18
Michigan	98	99	103	105	111	120	134	137	164	152	148	140	135	133	129	127	126	124	121	115	97	80	−17	−18
Wisconsin	97	100	103	104	117	124	133	142	171	166	164	147	139	130	125	122	120	119	117	104	91	80	−11	−12
West North Central:																								
Minnesota	96	100	105	107	122	136	156	167	213	213	187	177	170	159	156	143	140	136	123	110	98	79	−19	−19
Iowa	96	99	104	112	126	134	145	160	213	197	162	156	143	136	130	121	117	116	113	98	80	58	−22	−28
Missouri	97	100	103	102	106	115	126	137	167	166	133	127	117	112	104	99	96	96	93	79	67	55	−12	−18
North Dakota	97	100	103	103	112	116	124	130	145	141	128	128	114	109	106	100	99	98	96	83	73	66	−7	−10
South Dakota	96	101	103	101	106	116	126	145	181	173	146	136	117	115	107	97	96	96	93	82	67	55	−12	−18
Nebraska	96	100	102	101	104	110	127	145	179	166	144	139	126	123	123	119	117	116	113	100	80	60	−21	−23
Kansas	101	99	99	105	109	118	123	123	151	149	130	127	118	115	113	113	113	113	113	103	88	70	−19	−21
South Atlantic:																								
Delaware	100	101	99	100	105	113	124	129	139	139	119	110	107	113	114	111	111	111	111	107	95	80	−15	−16
Maryland	97	100	103	104	109	118	126	136	166	146	141	136	133	131	130	126	124	123	123	130	106	90	−16	−18
Virginia	97	100	103	97	117	126	142	167	189	180	157	170	163	154	148	139	137	136	134	117	99	88	−11	−11

West Virginia					
North Carolina					
South Carolina					
Georgia					
Florida					
East South Central:					
Kentucky					
Tennessee					
Alabama					
Mississippi					
West South Central:					
Arkansas					
Louisiana					
Oklahoma					
Texas					
Mountain:					
Montana					
Idaho					
Wyoming					
Colorado					
New Mexico					
Arizona					
Utah					
Nevada					
Pacific:					
Washington					
Oregon					
California					

[1] All farms land with improvements as of Mar. 1. Owing to rounding of figures, 1913-14 will not always equal exactly 100 percent.
[2] Minus (−) denotes decrease.

At the other end of the list is New England, where individual declines ranged from 6 percent for Rhode Island to 15 percent for Maine. For New England as a whole, the Bureau index declined from 116 to 105, or 9 percent.

Among other areas, considered as units, minor differences were exhibited. Average declines of 19 percent were reported by the East South Central and Pacific groups, an average decline of 17 percent was reported from the South Atlantic States, and 16 percent by the Mountain States. Values of real estate in the West South Central, East North Central, and Middle Atlantic divisions averaged 15 percent each below the levels of last year.

Considering States individually, the wide geographical distribution of large declines is even more evident. The largest drops were reported from Iowa and North Carolina, with decreases of nearly 28 percent and 25 percent, respectively.

Declines of from 21 to 23 percent were reported from such widely separated States as South Carolina, Idaho, Nebraska, Kansas, Arkansas, and Mississippi. Decreases from 14 to 19 percent were reported by 27 States, including at least 3 States from each of the 9 geographic divisions into which the United States is customarily divided except the New England and Middle Atlantic groups, from which there was 1 State each.

The 24 States reporting the largest relative decreases included 62 percent of the total land in farms, and 67 percent of the total value of farm real estate.

Judged by levels of values, relative to pre-war, reached as the cumulative effect of the depression, the North Central States, more particularly those of the Corn Belt, appear to have been most severely affected. In the Corn Belt States, values averaged less than two thirds of pre-war, and in the neighborhood of one third the peak values of 1920. In the Lake States of Minnesota, Wisconsin, and Michigan, values averaged around 80 percent of pre-war.

At the other extreme are the New England States, where the land boom of the twenties was felt less, and where the adversities of the recent years have pressed less heavily. For the group as a whole, values averaged about 5 percent above pre-war, with values in Maine, New Hampshire, and Vermont a little less, and those of the States farther south and closer to industrial centers averaging a little higher.

The Southern States as a group averaged in the neighborhood of 80 percent of pre-war. They averaged higher than the Corn Belt States largely by reason of the sustaining effects on values of the rebound of cotton prices in 1923 and 1924. In South Carolina and Georgia farm real estate values were lower, relative to pre-war, than in the neighboring States, owing in part, it appears, to the particular sequence with which the effects of boom cotton prices, subsequent deflation, and the bollweevil were experienced.

VALUES MORE NEARLY IN LINE WITH RENTS THAN IN EARLIER YEARS

Farm real estate values of course are predicated fundamentally upon income, and represent a composite market judgment of the present worth of future land income. Since it is future income, rather than past, that ownership of land provides, and since future

income depends upon numerous variable factors, there is an inevitable element of uncertainty in any estimation of present value. Both buyers and sellers need to consider this element of uncertainty and to allow for it, as it affects their respective interests. Since the factors entering into the determination of future land income are so complex, the tendency is to base estimates of the future pretty largely upon the experience of the recent past.

In periods of relative stability, confidence develops in the existing order, and the assumption that it will continue is the basis of business dealings, many of which involve long-time commitments. On the other hand, when customary relations become disturbed, the fundamental difficulty of accurately judging the future becomes evident, and people become more cautious in undertaking long-time contracts.

For example, the period 1900 to 1920 was one in which, by and large, farm incomes were increasing. The assumption seemed rather general, toward the end of the period, that the accustomed increase could be counted upon indefinitely, and current values reflected this assumption. As a result, the ratio of current net rents to current valuations became very low, and instances were not uncommon in which farmers were paying 6 percent interest on money borrowed to buy land priced to yield a much lower rate of return (*2*). An analogous situation existed in the security markets in 1929 (*13*). The prices of many stocks were such that the ratio of current dividends to current prices was very low.

With respect to farm real estate, these observations are illustrated by table 2, applying to Iowa. Attention has been called in previous yearly publications regarding the farm real estate situation to the upward trend over the last decade of the ratio of gross cash rent to the value of the land so rented. Gross cash rents, however, do not tell the whole story.

TABLE 2.—*Farm real estate rented for cash in Iowa: Approximate net rent per acre and proportion of current value based on current rents, 1921–33* [1]

Year	Average value per acre of cash-rental land	Gross cash rent per acre	Taxes plus estimated depreciation and repairs per acre	Approximate net rent per acre	Ratio of rent to value		Net rent capitalized at 4.5 per cent	Proportion of value represented by capitalized net rent
					Gross rent	Net rent		
	Dollars	*Dollars*	*Dollars*	*Dollars*	*Percent*	*Percent*	*Dollars*	*Percent*
1921	226	10.00	2.14	7.86	4.44	3.52	175	84
1922	188	7.36	2.15	5.21	3.91	2.78	94	50
1923	170	7.43	2.13	5.30	4.37	3.13	96	56
1924	164	7.16	2.15	5.01	4.39	3.19	96	58
1925	154	7.30	2.07	5.23	4.80	3.45	97	63
1926	157	7.53	2.12	5.41	4.81	3.48	98	63
1927	149	7.60	2.14	5.44	5.16	3.72	101	68
1928	142	7.73	2.15	5.60	5.46	3.94	102	72
1929	140	7.79	2.22	5.57	5.56	3.96	101	73
1930	130	7.27	2.20	5.07	5.60	3.90	101	78
1931	114	7.43	1.84	5.59	6.52	4.91	108	95
1932	93	6.99	1.79	5.20	6.24	4.69	79	85
1933	76	4.69	[2] 1.61	3.08	6.17	4.07	31	[2] 74

[1] All data preliminary. [2] Estimated.

To arrive at an approximation of the share of income attributed or imputed to real estate, it is necessary to deduct from the gross rent, the taxes, depreciation, and repairs that are chargeable against it.

The result, given adequate data, closely approximates the land income that may properly be capitalized in considering value.

Data on real estate taxes per acre have recently become available, and an allowance for depreciation and repairs to buildings has been calculated as 3 percent of building values. This figure is based upon farm-management surveys. Value of buildings has been estimated from census data and, since 1930, upon approximate changes in building costs. The results, although not applicable to any specific farm, are believed to be representative of the general trends involved in recent years.

In the first several columns in table 2 are given the value, gross cash rent, deductions, and approximate net rent for the period for which data are available. The next two columns present the ratio of the gross and net rents to value. These ratios have risen considerably from the low values of the early twenties, a slight down turn, however, being suggested by the 1933 data. Whether this down turn marks a definite change in trend cannot now be determined, but it is significant to note that the same change holds good for several of the other States of the region.

One possible qualification may be noted respecting rents for the last 3 years. The rents indicated are the contract rents, given at the beginning of the respective years. No information is available as to whether there has been subsequent modification of the contractual rents in line with the decline in prices of farm products. In view of the magnitude of the drops in gross farm returns during 1931 and 1932, it is entirely possible that concessions have been made and that the rents actually collected have been lower than those contracted. The values are also reported at the beginning of the year, and since a modification of rent would presumably involve a corresponding change in the estimate of value, it would appear on the whole that whatever bias may exist on this score is relatively unimportant.

It has been noted in earlier investigations[4] (*2*) that as a result of the long period of rising incomes leading up to 1920, current valuations involved to a large extent the capitalization of an expected continued annual increase in incomes. The investigation disclosed that, if the current interest rate on mortgage indebtedness be accepted as a fair capitalization rate, approximately 56 percent of the 1920 values in the central Corn Belt were based upon the anticipated *future increases* in net rents, and conversely, that only about 44 percent of the 1920 values represented capitalization of the then current net rents.

In table 2 a similar analysis is applied to the Iowa data on cash rents secured from the Department's crop correspondents. Capitalizing the estimated net rents given in table 2 at 5.5 percent, which is a close approximation to the average mortgage rate of interest in Iowa,[5] gives the values in the next to the last column. The propor-

[4] WILKINS, E. H. THE ECONOMIC BASIS OF FARM LAND VALUES. U.S.Dept.Agr., Bur. Agr. Econ., 23 pp., illus. 1928. [Mimeographed report.]

[5] The average rate of interest on farm mortgages in Iowa, according to the 1920 census, was 5.3 percent; the total costs of mortgage money was 5.58 percent, according to the 1930 census. The latter figure includes financing costs in addition to interest, estimated at from 0.1 percent to 0.3 percent. An investigation (*9*) in Story County, Iowa, indicated the modal rate of interest was 5 percent from 1900 through 1921, except for a brief period shortly following 1920, when it rose to 6 percent. The annual arithmetic mean interest rate fluctuated in the neighborhood of 5.5 percent, rising to more than 6 percent shortly after 1920 and then dropping again to 5.5 percent or slightly below.

tion of average value per acre represented by the capitalized net rent is indicated in the last column.

Three observations should be noted at this point. In the first place, it is not suggested that the capitalized net rents represent the true value of Iowa land in any 1 year. Value depends, as has been pointed out, not on income in 1 year, but upon all future incomes. It is likely, however, that had it been generally recognized in 1921 that net rents would not rise materially during the decade, values would have fallen somewhat more rapidly than they actually did in the earlier years of the decade.

In the second place, the mortgage rate of interest may not be exactly the proper rate of capitalization. Farming is a way of life as well as an occupation, and offers satisfactions that are not susceptible to exact measurement. These factors may lead to a willingness on the part of farmers generally to pay a higher rate of interest on mortgage money than they require on their own invested capital. For present purposes, however, it is not particularly important whether the correct capitalization rate is a little higher or a little lower than the mortgage rate. The essential point is the trend, and in the absence of evidence indicating definite changes in the theoretically correct rate, the mortgage rate seems to offer the best practical approximation to the rate of capitalization. A lower rate would result in larger figures in the next to the last column, but would not materially alter the direction of trend.

In the third place, it should not be inferred from table 2, that since current net rents capitalized at 5.5 percent do not account for the whole of current values, further declines in values will necessarily follow. As has been pointed out, it is as yet a matter for conjecture whether the mortgage rate of interest may or may not be too high for use in capitalizing net rents. Its use seems more justified in demonstrating the existence of trends than in forecasting the precise location of "turning points." The prospect of a series of definitely higher rents, as a result of higher incomes, would exert a very definite influence upon the situation. The effects, for example, of the somewhat increased gross income from farm production in prospect for 1933, may be expected to reverse some of the deflationary forces acting on farm real estate values. It is still too early to appraise the precise effects.

SUPPLY OF FARMS LARGE, SEVERAL TYPES OF POTENTIAL BUYERS

In the formulation of a long-time investment policy, not only the short-time factors, including the effects of recovery upon the low prices of early 1933, but also certain factors of a more permanent nature, need to be considered.

Of very great importance, for example, are the factors that may be expected to determine the trend of the general price level over a considerable period, as distinguished from such shorter time movements as may be expected to accompany recovery from the depths of depression. The effects upon farm real estate values of a long-time upward trend in the price level may be expected to be quite different from those of long-time downward or horizontal trend. Other circumstances such as those affecting the prospective food

requirements of the Nation, not only in the aggregate but with respect to specific groups of products, are of definite importance from the long-time viewpoint. Whereas, for example, in the earlier part of the century, some apprehension was felt concerning the adequacy of the food supply for the anticipated population, recent years have brought evidence indicating that little apprehension need be felt on this score. On the one hand, the prospect of a declining or stationary population by 1950 or 1960, and on the other, the improvements in technic of production, such as the possibilities in the use of fertilizer, changes in dietary habits, shift to mechanical power thus releasing land from producing feed for work stock, and shifts from less to more efficient producers of meat, appear to have materially altered the prospects with which the century opened insofar as the required food supply in concerned.[8] These factors, however, pertain primarily to the long-time point of view.

For the more immediate future, the demand for and the supply of farms are most significant. On the supply side, there are first, the large holdings of mortgage lenders, together with other land which is delinquent and subject to foreclosure. Many holders have evinced an indisposition to sell their better properties at existing prices, although there is no doubt that much foreclosed land has been sold below the value of the investment.[9] In view of recent developments toward higher prices of farm products, it appears likely that owners of foreclosed land will make vigorous efforts to recover at least their investment, wherever possible.

Another source of supply may be noted. A farm is a durable good, which sooner or later must pass to a new owner. Voluntary transfers have been greatly restricted for several years, and although the number of farmers who wish to sell out and go to work in the city has probably been reduced, it is likely that there are a considerable number of owners who have not had to sell, but who would be willing to do so at a reasonable price. Farms owned by older farmers, that would normally have been sold as their owners retired, may come on the market when conditions clear sufficiently. The Bureau data on transfers indicate an increased number of inheritances, which may in part result from the curtailed voluntary sales of recent years (table 12). Older farmers, unable or unwilling under circumstances of the last several years to sell out and retire, may have willed farms to their heirs, who may or may not wish to engage in farming. In the latter case, a potential supply of farms for sale exists.

A great deal depends upon the availability of credit. For farms acquired through foreclosure, fairly lenient terms of sale may be reasonably anticipated if experience of recent years is acceptable as a guide, for, although new credit has been restricted, fairly lenient terms have in many cases been offered to purchasers of foreclosed land. The rapidity with which a renewed supply of funds becomes available for financing farm sales will have an important effect upon the restoration of greater activity in farm real estate.

On the demand side may be mentioned the group of tenants. Tenancy, it may be noted, reached an all-time peak in 1930, accord-

[8] BAKER, O. E. THE PROSPECT FOR CONSUMPTION OF FARM PRODUCTS. U.S.Dept.Agr. 1932. [Mimeographed.]

[9] See p. 55.

ing to the census, when 42.4 percent of all farms in the United States were operated by tenants. Some of these have rented for years but have not bought for various reasons. With the high costs of ownership and the risks of buying in the face of an uncertain price level, many felt that it was more profitable to rent than to buy land. Some of these are potential purchasers who will enter the market when they believe conditions are right. Indications of a strong rental demand for the last few years suggest that the competition for farms to rent may encourage purchasing. In many cases, too, foreclosed farms are now being rented by former owners, some of whom have arranged repurchase agreements. If suitable terms can be arranged some of these are likely to enter again the ownership status, as conditions permit.

As has been widely noted the farm population is the highest in the Nation's history (4), partly as a result of natural population increase, and partly as a result of the lowered rate of cityward migration. Some of this group are potential farm buyers. But in considering their effect upon the land market, it must be recalled that a large proportion of this group have very restricted purchasing power as a result of prolonged unemployment, loss of savings in closed banks, or, on the part of younger farmers, the lack of opportunity to acquire capital. Part of them, on the other hand, are no doubt merely residing with parents or other relatives, and doubtless hope to return to their accustomed vocations at the earliest opportunity. There is some indication that many of this group, especially those from cities, are more interested in relatively small farms, preferably near cities, where part-time farming can supplement other income. The lower capital outlay required to swing such a deal is also a factor in favor of the small farm, for a small farm may often be bought outright for an amount that would form only the down payment on what the real farmer would consider a farm of desirable size. The events of recent years have suggested strongly the advantages of being free of debt, and it is likely that the lesson will be remembered for some time to come.

As a result, too, of the restricted flow of young people to the city, a larger number of young farmers may be expected to be coming into the market for farms, especially if, as some students fear, industrial opportunities are more restricted in the next than in the past decade.

A further potential source of farm buying that may become a considerable factor in the market is the investor. Some activity of this type has been in subdued evidence in recent years, and if the price situation continues to improve, it is not at all unlikely that investors will turn their attention more strongly to farm real estate. There are indications that buyers have been holding off, waiting for the bottom. The importance of this state of mind in the present situation is indicated by the widespread attention on the part of observers that has been given to the subject of commodity prices, interest, and tax rates. The normal expectation is, therefore, that a well-substantiated price rise among farm products would convince investors that the bottom had been reached.

From a broad point of view, the recent drastic shifts in the exchange relations between dollars on the one hand, and commodities

on the other, have probably served to bring more forcibly to the attention of many people the problems inherent in long-term commitments. Were contracts devised with sufficient flexibility so that loans might be kept in good standing even in times of drastic changes in price levels, the way might be opened not only to hastening the moving of the large number of farms now held by unwilling owners, but also to preventing a recurrence of a similar catastrophe of a wholesale loss of equities in the future. The use of some form of crop-payment plan is one method of meeting the problem. Another method, which has been developed as the basis of agreement between debtor and creditor in the current situation [10] (*12*), consists in a sliding scale of interest payments, depending upon an index of commodity prices. The possibility of applying some such plan to payments on principal, in addition to interest, furnishes an interesting field for exploration. By such a plan the prospective buyer might be encouraged to make a commitment, because the danger of losing his initial investment and succeeding payments as a result of factors beyond his control would be greatly reduced. Similarly, prospective sellers might be more willing to sell, rather than preferring to hold for the rise in prices, for, in case of such a rise, their payments would increase, and the advantages of holding their property would be largely attained. Thus, insofar as fear of further considerable changes in price levels discourages buying and selling, the clearing up of the foreclosed land situation would be facilitated by such contracts.

The fundamental factor in clearing up the present congested real estate situation lies in the development of a workable adjustment between prices of commodities sold, commodities bought, debt service, and taxes. Given the prospect for such an adjustment, progress may be expected. The large amounts of distress land and the restricted purchasing power of prospective purchasers suggest, however, that time will be required to work out a solution that will remove the major part of the debris from this depression.

The past year is one in which much attention has been given to these problems, and some progress is being made. Continued cooperation on the part of all parties concerned will accomplish much toward the eventual clearing of the situation.

Nevertheless, the cumulative effect of the pressure on farm real estate has resulted in a badly congested market. With the amount of involuntarily held land at high levels, and with additional amounts delinquent, much remains to be done before a normal market for real estate is restored. How rapidly this congestion can be cleared up and a normal market again restored is a subject for conjecture. No very great confidence can be placed in precedent, for the only period when distressed selling was at comparable levels, was the depression of the nineties. The satisfactory liquidation of involuntary holdings of that period was greatly facilitated by the persistent upward trend of farm real estate values beginning near the turn of the century, and concluding with the 1920 peak, during

[10] PECK, M. [ADJUSTING FARM RENTALS AND THE INTEREST LOAD TO CHANGING PRICES.] Iowa State Col., Dept. Agr. Econ. Nov. 2, 1932. [Mimeographed material.]

which time real estate values more than trebled. This upward trend, however, was the result of a peculiar combination of circumstances.

INCOME FROM FARM PRODUCTION WAS THE LOWEST IN MORE THAN 20 YEARS

Gross income from farm production in 1932 fell to the lowest level in the 24 years for which a statistical record is available (table 3, fig. 2). For the whole United States it was estimated (*14*) at

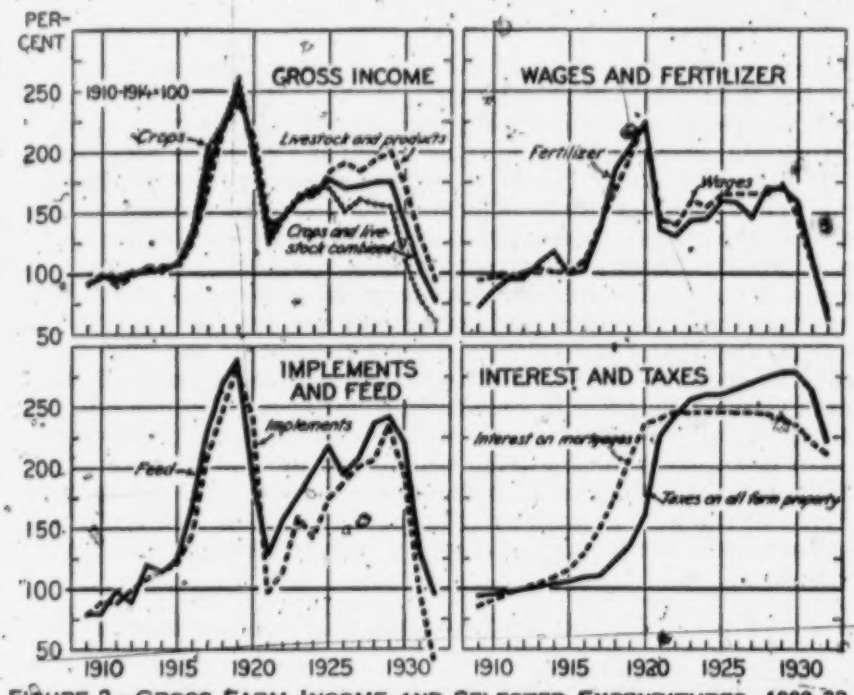

FIGURE 2.—GROSS FARM INCOME AND SELECTED EXPENDITURES, 1909-33.

Gross income from farm production, after remaining fairly stable from 1925 to 1929, declined rapidly, and in 1932 was over 1¾ billion dollars less than the average for the pre-war years 1910–14, and less than half the average for the 1924–29 period. Gross income in 1932 from crops was lower relative to pre-war than that from livestock.

$5,143,000,000, approximately 1½ billion dollars below the average for the 5 pre-war years, 1910–14, about 1¾ billions less than in 1931, and somewhat less than half the average for the period 1924–29. The reduction since 1929 has been predominantly due to price declines. From 1929 to 1932, gross income dropped 57 percent, whereas the volume of physical production for both home and market dropped only about 5 percent, and the Bureau index of prices received by farmers declined about 59 percent in the same period.

TABLE 3.—*Gross income from farm production of the calendar years, 1909–32*

Year [1]	Gross income	Year [1]	Gross income	Year [1]	Gross income	Year [1]	Gross income
	Million dollars		*Million dollars*		*Million dollars*		*Million dollars*
1909	6,238	1915	7,395	1921	8,927	1927	11,616
1910	6,643	1916	8,914	1922	9,944	1928	11,741
1911	6,372	1917	12,832	1923	11,041	1929	11,918
1912	6,784	1918	15,101	1924	11,337	1930	9,414
1913	6,975	1919	16,935	1925	11,966	1931	6,911
1914	7,028	1920	13,566	1926	11,489	1932	[2] 5,143

Income from farm production in the United States, 1932 (*14*).

[1] Crop year for crops; calendar year for livestock and livestock products.
[2] Preliminary.

Gross income from both crops and livestock was less than a year ago, but the relative change was less in the case of crops than of livestock, the relative decline having been 22 and 28 percent, respectively.

Hogs and sheep and wool experienced the greatest relative losses in the livestock group (table 4), whereas grain prices declined more than prices of other crops. Considering the total decline relative to 1929 (or the series of years preceding) crops, led by the grains, averaged greater losses than livestock and livestock products. Gross income from grains in 1932 was only 25 percent of that of 1929, gross income from cotton and cottonseed was only 31 percent of that of 1929, and that from tobacco was 39 percent of the 1929 amount. Gross income from fruits, nuts, and vegetables was about half the 1929 amounts, whereas gross income from sugar crops declined only about a fifth. In the livestock group the greatest declines occurred in the case of hogs, gross income from which was, in 1932, 35 percent of the 1929 amount; in the case of sheep and wool the 1932 income was 41 percent of the 1929 amount; in the case of cattle and calves it was 45 percent; while for poultry and eggs it was 49 percent; and for dairy products 54.

TABLE 4.—*Gross income from farm production by groups of commodities, 1929–32*

Source of income	1929	1930	1931	1932
	Million dollars	*Million dollars*	*Million dollars*	*Million dollars*
Crops:				
Grains	1,283	779	474	322
Fruits and nuts	706	567	453	340
Vegetables	1,132	943	724	596
Sugar crops	85	94	69	68
Cotton and cottonseed	1,389	751	528	431
Tobacco	286	212	132	111
Other crops	540	453	334	245
Total	5,421	3,799	2,714	2,113
Livestock and livestock products:				
Cattle and calves	1,171	951	681	502
Hogs	1,531	1,350	912	539
Sheep and wool	262	204	156	107
Poultry and eggs	1,230	1,050	809	603
Dairy products	2,323	2,081	1,614	1,260
Other	40	29	25	20
Total	6,497	5,615	4,197	3,030
Total	11,918	9,414	6,911	5,143

Income from farm production in the United States (*14*).

The close relationship between the course of gross income from various commodity groups and of their prices, is evident from tables 5 and 6. The former presents the Bureau's index of prices received by farmers for six groups of commodities and for all groups and

the latter shows the prices of principal individual commodities relative to the pre-war period, August 1909–July 1914. The lower indexes for the grains, cotton, and hogs explain in large part the lower

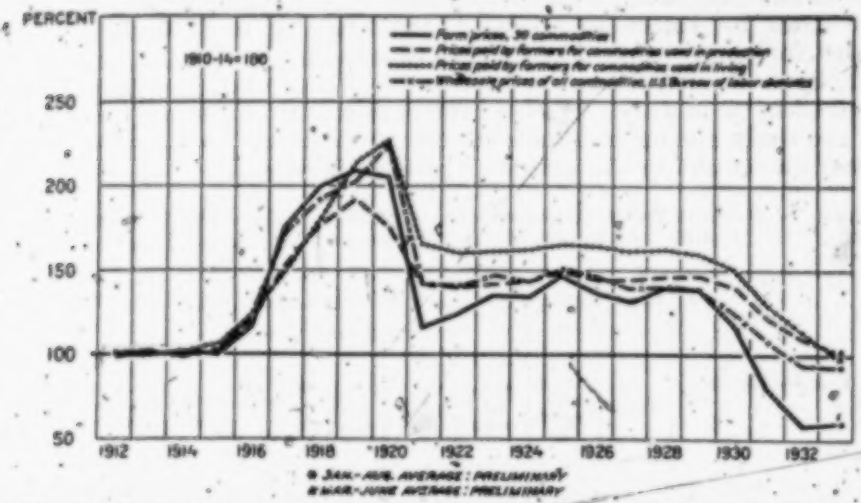

FIGURE 3.—PRICES RECEIVED AND PAID BY FARMERS, AND WHOLESALE PRICES OF ALL COMMODITIES.

Continuing the declines of recent years, prices of many farm products reached ruinous levels during 1932 before turning upward in the first half of 1933. Prices of commodities used by farmers, both for consumption and for production, declined less, relatively, than did prices of farm products, and responded less rapidly in the first half of 1933 to the influences encouraging higher prices. In August, prices received by farmers were lower than in July.

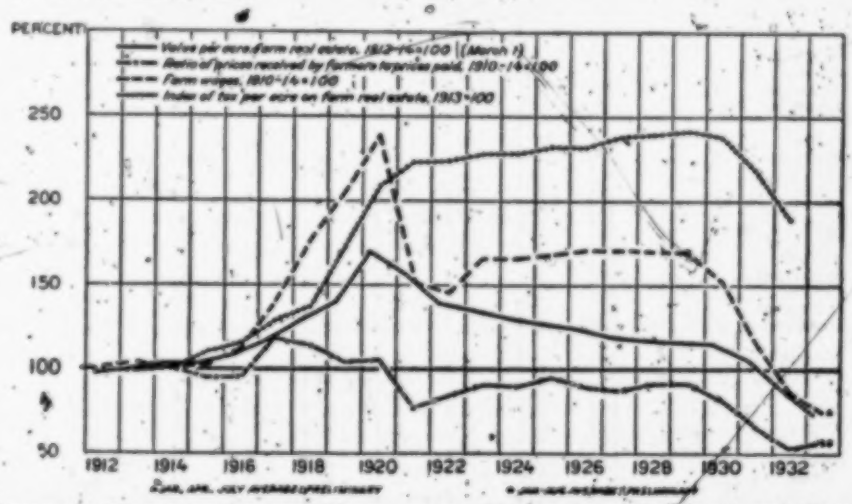

FIGURE 4.—RATIO OF PRICES RECEIVED TO PRICES PAID, FARM WAGES, TAXES PER ACRE ON FARM REAL ESTATE, AND VALUE PER ACRE OF FARM REAL ESTATE.

Taxes on farm real estate in 1932 were appreciably lower than in 1931, and wages to hired labor, and other operating costs declined. Farm real estate values, for the country as a whole, declined for the thirteenth consecutive year. Owing to the higher prices in the first half of 1933 the exchange value of farm products in return for other commodities increased. In August, however, it was lower than in July.

gross income received from these products. The trend of prices of farm products and its relation to other important series is presented in figures 3 and 4.

Since late 1932 or early 1933, however, the course of prices has been, in general, upward. From a low of 33 in December, the index for grains increased to 94 in July 1933; the index for fruits and vegetables increased from 57 in February to 120 in August; and the index for cotton rose from 43 in December to 84 in July. The index for poultry products, on the other hand, stood at 121 in December, 96 in January, and 54 in March. From that low point it increased to 67 in July. Much of the decrease from the winter months to the early spring was undoubtedly attributable to the strong seasonal movement in the prices of poultry products.

TABLE 5.—*General trend of prices and purchasing power for specified years, 1910–32, and by months, September 1931 to August 1933*

Year and month	Index numbers of farm prices (August 1909–July 1914=100)							Ratio of prices received to prices paid [1]	Wholesale prices, all commodities, U.S. Bureau of Labor Statistics, 1910–14=100
	Grains	Fruits and vegetables	Meat animals	Dairy products	Poultry products	Cotton and cottonseed	All groups		
1910	104	91	103	100	104	113	103	105	103
1915	120	83	104	98	103	78	100	95	102
1920	231	249	173	188	222	248	205	106	225
1925	156	160	139	137	161	177	147	95	151
1926	129	180	146	136	156	122	136	89	146
1927	128	155	139	138	141	128	131	87	139
1928	130	146	150	140	150	152	139	91	141
1929	121	136	156	140	159	145	138	91	139
1930	100	156	134	123	126	102	117	81	126
1931	63	98	93	94	96	63	80	65	107
1932	44	71	63	70	80	46	57	53	95
1931:									
September	50	83	86	92	99	47	72	60	104
October	46	70	79	95	110	42	68	57	103
November	57	68	76	95	123	56	71	60	102
December	52	68	68	92	120	45	66	56	100
1932:									
January	52	70	68	85	87	45	63	55	98
February	51	68	65	79	70	47	60	53	97
March	51	73	69	76	61	50	61	54	96
April	50	78	66	74	60	46	59	53	96
May	49	80	59	69	60	42	56	51	94
June	44	82	57	62	59	37	52	48	93
July	42	83	72	63	65	41	57	53	94
August	43	79	69	65	75	51	59	55	95
September	41	68	67	67	84	57	59	56	95
October	36	59	60	66	102	51	56	53	94
November	34	57	57	68	115	47	54	52	93
December	33	59	52	69	121	43	52	50	91
1933:									
January	36	59	51	68	96	45	51	50	89
February	34	57	53	62	57	44	49	49	87
March	36	60	56	59	54	48	50	50	88
April	47	66	57	59	56	49	53	52	88
May	62	68	65	63	62	65	62	61	92
June	63	74	66	65	55	69	64	62	95
July	94	103	66	71	67	84	76	71	101
August	81	120	63	72	67	71	72	64	102

[1] The value of a unit of the farmer's product at farm prices in exchange for commodities bought by farmers for use in both production and living, at retail prices, as compared with pre-war values (table 7).

TABLE 6.—*General trend of prices of individual products, for selected years, 1910–32, and by months, September 1931 to August 1933*

[Relative farm prices (August 1909—July 1914=100)]

Year and month	Grains			Meat animals				Fruits and vegetables			Dairy and poultry products				Cotton and cottonseed		Unclassified	
	Wheat	Corn	Oats	Cattle	Calves	Lambs	Hogs	Potatoes	Apples	Sweet potatoes	Milk	Butter	Eggs	Chickens	Cotton	Cottonseed	Hay	Wool
1910	110	96	102	92	96	108	113	77	102	88	100	102	105	103	113	114	95	116
1915	127	112	113	116	113	116	91	78	77	97	96	102	102	104	73	112	88	126
1920	250	220	196	163	178	202	180	353	204	196	177	214	223	224	260	235	177	214
1925	171	166	112	120	131	208	152	163	184	198	127	161	157	178	179	180	106	221
1926	153	109	97	124	143	196	163	269	127	178	125	163	147	192	122	124	110	186
1927	136	123	113	139	151	193	134	190	129	130	126	168	131	178	126	130	101	174
1928	128	139	123	176	174	205	121	119	152	125	128	173	141	186	159	174	99	203
1929	116	136	111	177	180	202	130	134	146	135	127	173	149	196	143	159	97	176
1930	92	121	95	145	147	139	122	178	140	132	114	148	117	162	100	119	96	119
1931	55	78	64	104	104	98	81	104	98	105	88	110	86	126	61	77	82	80
1932	44	44	46	78	74	75	48	62	73	69	65	83	74	102	47	44	63	84
1931:																		
September	40	67	50	96	103	85	75	86	74	93	84	109	89	138	48	41	75	74
October	41	58	50	92	97	79	65	66	61	75	85	119	106	126	43	35	72	70
November	57	57	58	92	89	76	60	66	64	66	86	117	123	126	49	53	73	74
December	50	54	56	84	83	71	52	66	67	67	83	114	119	122	44	50	73	72
1932:																		
January	52	52	57	82	83	75	52	62	66	70	77	106	80	117	43	47	72	70
February	50	50	57	78	86	78	49	64	68	70	74	92	60	111	47	46	71	73
March	50	50	57	82	84	86	54	66	74	73	71	90	48	111	50	46	73	70
April	49	49	57	81	75	87	49	67	82	78	69	86	47	113	46	44	78	62
May	48	47	55	75	69	81	41	67	86	74	64	79	45	107	42	44	71	51
June	42	46	50	73	69	76	39	64	96	71	58	73	49	100	37	40	64	40
July	40	47	44	67	74	74	58	70	90	73	60	72	56	103	41	39	68	39
August	44	47	37	84	73	70	56	74	68	78	60	77	66	103	52	41	57	42
September	42	44	36	88	76	70	52	58	60	63	62	78	80	102	56	51	57	51
October	39	39	33	78	70	67	45	49	60	50	63	79	106	94	52	47	55	53
November	37	30	33	72	66	66	42	40	59	43	63	80	121	89	48	43	53	59
December	36	29	33	66	62	67	38	53	64	44	63	84	131	81	44	40	52	52
1933:																		
January	37	30	34	63	61	69	37	54	68	48	62	81	100	82	45	40	51	50
February	37	30	33	64	70	71	41	53	69	50	66	72	51	82	44	40	50	49
March	39	32	34	66	68	72	44	56	73	53	65	71	47	80	49	42	50	50
April	51	44	48	68	65	73	44	61	82	57	64	73	45	85	60	45	52	57
May	67	61	54	76	67	80	54	63	88	64	66	78	55	91	66	55	54	99
June	66	63	58	78	67	88	58	71	92	65	69	78	47	88	70	58	54	120
July	98	86	98	76	68	89	55	140	90	77	86	84	61	91	85	75	59	128
August	84	76	81	73	70	89	52	188	78	106	89	80	62	86	71	71	68	136

There are only a few agricultural parts of the country which are not rather heavily dependent upon at least one of the three groups—grains, cotton, and hogs—each of which has experienced price declines of approximately two thirds or more from 1929 levels. Most of the remaining agricultural area includes those that are primarily dependent upon poultry, and poultry products, dairy products, vegetables, and fruits and nuts, cattle, and sheep. In the case of these products declines in gross income have closely approximated or even exceeded 50 percent in the period 1929–32. Thus it is that declines in realty values since 1929 have been so slightly divergent. Some significant differences existed between the levels reached as of that date, but the declines in major agricultural regions since then have differed relatively slightly.

Operating expenses of farmers have, of necessity, been curtailed over those of a year ago. The Bureau's estimate (*14*) [11] of total operating expenditures of farmers for 1932 was $1,351,000,000. This represents a drop of nearly 30 percent from the $1,921,000,000 of the year previous, which in turn was 32 percent less than the $2,824,000,000 of 1930.

Operating expenditures for the year represent 46 percent of the 1924–29 average, and gross income represents 44 percent of its average for the same period. Operating expenditures and gross income as a whole have thus been reduced almost, but not quite, in proportion. Significant variations appear, however, in the distribution of the decrease. Current expenditures for items directly associated with production, such as feed, seed, fertilizer, spray materials, and costs of operating tractors and automobiles, averaged 41 percent below the 1924–29 average.

Items of capital expenditure for machinery, automobiles, and trucks, or repairs on farm buildings declined 78 percent. Expenditures for these items can be postponed to a considerable extent. The old binder may be patched up to get through another year, and the painting or repairing of buildings can be postponed. These changes, particularly the former, result in a substitution of labor for equipment to some extent, and a more rapid rate of depreciation on permanent improvements. Continued long enough, delayed purchase of capital equipment means reduced output per worker and a return to more antiquated production methods. From the standpoint of the equipment industries, the decrease from an annual expenditure for new equipment and repairs of $1,000,000,000 to about $218,000,000 represents a sizable cut in production, which is, of course, reflected in lower payments for one or more of the items of raw materials, labor, and dividends.

Cash wages for hired labor have also been greatly reduced. From an average of nearly $924,000,000 for the years 1924–29, cash wages dropped to $809,000,000 in 1930, to $587,000,000 in 1931, and to $380,000,000 in 1932, a total reduction of 59 percent from 1924-29.

The expenditures considered so far are more or less flexible, and can be varied to some extent at the judgment of the operator. The items of taxes, interest, and repayment of principal on indebtedness are not so flexible. Some reduction in the tax burden on agricultural real estate has been accomplished, as is indicated by the decline in the estimated total of taxes payable [12] from $699,000,000 in 1930 to $664,000,000 in 1931, and to $556,000,000 in 1932. The total decline in taxes payable from 1930 to 1932 is 20 percent.

Most inflexible of all items of expenditure is that for interest payable.[13] From 1930 to 1932, this item has declined only 10 percent, or from $683,000,000 to $612,000,000. Most of this decline follows

[11] These operating expenditures include some capital outlay which should not be charged to a single year's operations in a strict accounting sense. But viewed from the standpoint of expenditure of available resources, they may be legitimately included. Further details are available in the reference indicated.

[12] As distinguished from taxes paid. A large but unknown amount of delinquent taxes exists.

[13] As distinguished from interest paid. It is known that there has been much delinquency on debt service, but it is not known how much of the delinquency applies to interest and how much to principal.

from the reduction in mortgage indebtedness outstanding.[14] There have been some cases where compromises of one sort or another have been worked out between debtor and creditor, thus reducing somewhat the interest charge. The total mortgage debt is estimated to have been approximately $9,000,000,000 as of January 1, 1930, and approximately $8,500,000,000 as of January 1, 1933. A considerable part of the decline is believed to have resulted from cancellation of debt by foreclosure.

Some of the relations between these changes are more clearly evident when the items of expenditure are expressed as percentages of gross income. Current operating expenditures varied only slightly from 16 percent of gross income during the 1924–29 period, but increased to nearly 21 percent in 1930–31, and to 22 percent in 1932, indicating that these items failed to decrease as rapidly as income.

Capital expenditures, on the other hand, varied from 7 to 10 percent during the 6-year period, but declined sharply after 1929, and amounted to only 4 percent of gross income in 1932. Cash wages to hired labor absorbed in the neighborhood of 8 percent of gross income, the ratio having changed only slightly during the whole period.

The combined items of interest and taxes averaged about 12 percent of gross income over the period 1924–29, with relatively slight variations. This was about one half higher than during the period 1909–16. The increase in debt during the 1910–20 decade was largely responsible for the increase. In the last 4 years, the share of income absorbed by these two items has very nearly doubled, in 1932 amounting to 22.7 percent of gross income, or about three times the 1909–14 share. In 1932 the share of total gross income represented by taxes payable was 10.8 percent and that by interest payable was 11.9 percent. As a matter of fact, however, less than half[15] the farms of the United States are mortgaged, and interest on mortgages is paid only by this share. Hence, on an average for mortgaged farms, the share of gross income that is claimed by interest, is probably nearer 20 percent than 10 percent. Since the amount of debt varies greatly from farm to farm, there are many farms on which the proportion is far greater than this.

The reduced expenditures noted have been accomplished partly through buying less and partly as a result of lower prices. Just how much of the decrease each of these factors is responsible for is not known. Undoubtedly great variations exist between different types of commodities. Since, however, the Bureau index of prices of commodities bought for use in production (table 7) declined only 27 percent from the 1924–29 level, and since total operating expenditures have been reduced 46 percent, it is evident that a considerable reduction in the physical quantities of goods bought has occurred.

[14] The total is based upon all bank loans, other than real estate loans, and on 90 percent of mortgage indebtedness, 10 percent of the total mortgage debt being assigned to farm dwellings.

[15] Forty-two percent, according to the 1930 census.

TABLE 7.—*Index numbers of prices paid by farmers, by years, 1910–32, and in stated months, 1930–33*

[1910-14=100 percent]

Year and month	Commodities used in production[1]							Commodities bought for family maintenance[2]	All commodities bought for both production and family maintenance	Wages paid to hired labor	Commodities bought for use in production plus wages paid to hired labor	Index of farm real estate tax per acre[3]
	Feed	Machinery	Fertilizer	Building materials for other than house	Equipment and supplies	Seed	All commodities bought for use in production					
1910	93	102	99	100	101	.....	98	98	98	97	98	.....
1911	107	101	99	102	100	.....	103	100	102	97	101	.....
1912	91	102	100	103	100	108	98	101	99	101	99	.....
1913	107	98	102	101	100	97	102	100	101	104	103	100
1914	102	96	100	93	99	99	99	102	100	101	99	101
1915	100	100	112	102	106	120	104	107	105	102	103	110
1916	130	107	120	117	129	142	124	124	124	112	121	116
1917	184	126	137	137	156	149	151	147	149	140	149	130
1918	198	155	170	161	181	190	174	177	175	176	174	137
1919	211	161	182	189	180	280	192	210	200	206	195	173
1920	137	167	186	205	189	152	174	222	194	239	189	209
1921	97	156	156	156	152	134	141	161	150	152	143	223
1922	123	142	129	159	140	130	139	156	146	148	141	226
1923	134	146	126	161	136	142	141	160	149	166	147	225
1924	142	152	120	161	133	151	143	159	150	166	148	229
1925	141	153	129	164	140	172	147	164	154	168	152	233
1926	137	154	126	162	144	214	146	162	153	171	152	233
1927	138	154	121	160	141	197	145	159	151	170	151	238
1928	148	154	131	158	138	179	148	160	153	169	153	239
1929	145	153	130	159	136	185	147	158	152	170	153	241
1930	132	152	126	155	131	174	140	148	144	152	143	238
1931	93	150	115	139	116	152	122	126	124	116	120	218
1932	69	141	99	126	107	102	107	108	107	86	102	189
1930:												
March	134	154	126	158	133	176	142	156	148	162	147	.....
June	135	152	126	157	132	176	142	152	147	160	146	.....
September	138	152	125	153	131	176	142	146	144	150	144	.....
December	120	152	125	150	128	168	135	140	137	129	134	.....
1931:												
March	108	151	119	144	124	174	129	134	131	127	129	.....
June	100	150	119	140	114	174	125	129	127	123	124	.....
September	83	150	110	137	114	133	117	124	120	113	116	.....
December	80	148	110	134	114	127	116	118	117	98	112	.....
1932:												
March	76	142	103	130	111	109	112	113	112	94	108	.....
June	72	142	103	127	106	100	109	108	108	87	104	.....
September	67	140	98	124	106	94	105	106	106	84	100	.....
December	62	139	90	123	104	94	104	103	103	74	97	.....
1933:												
March	73	135	91	119	103	85	101	99	100	73	94	.....
June	77	133	91	123	97	85	106	102	103	78	98	.....

Compiled from prices reported to the Department of Agriculture by retail dealers throughout the United States. The index numbers include only commodities bought by farmers, the commodities being weighted according to purchases reported by actual farmers in farm-management and rural-life studies from 1909 to 1928. Figures for other months used in table 8 are straight interpolations between the above quarterly reporting dates.

[1] 1912-14=100.

[2] Includes food, clothing household operating expenses, furniture and furnishings, and building materials for house.

[3] 1913=100.

In contrast, the aggregate physical quantities of agricultural marketings have shown little change from 1924 to 1929. In short, the agricultural plant and personnel have continued to provide about as much food and raw materials as in other recent years, but in exchange have received a smaller quantity of the goods and services produced by industry. The capital and personnel of the nonagri-

cultural part of the population have curtailed production very markedly, with idle personnel, and plants operating at fractional capacities. In the last analysis the total quantity of goods produced is the total quantity that can be consumed. As a result of unemployment, the decrease in purchasing power has been far from equal, especially among industrial and commercial workers, some having reduced their consumption only slightly, others to a mere subsistence level. In agriculture, on the other hand, the prime requisites of existence have, on the whole, been available—primarily because all were working. Some, of course, have lost their homes, and the proportion of physical production required to meet debt and interest charges has increased tremendously, as a result of price declines, leaving a smaller share to be exchanged directly for the products of industry.

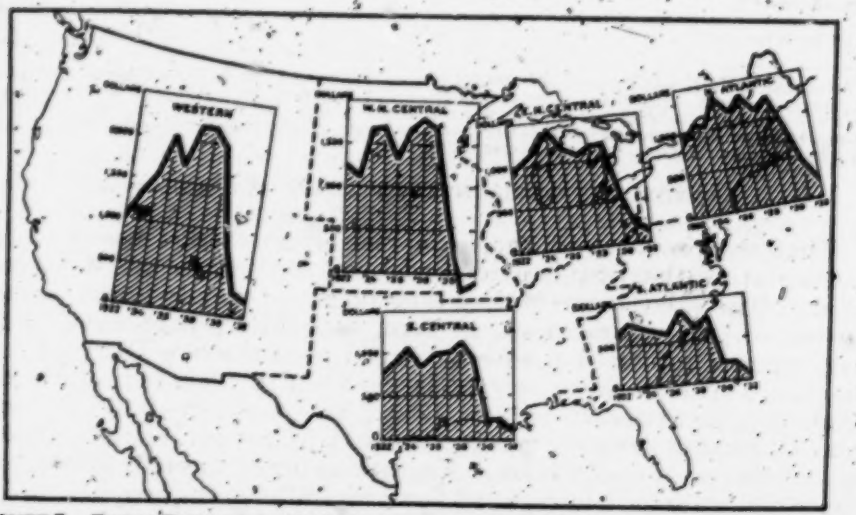

FIGURE 5.—FARM RETURNS, 1922-32: AVERAGE NET RESULTS ON OWNER-OPERATOR FARMS, BY REGIONS.

The average operating net results for 1932, as reported by the Department's crop correspondents, were lower than in 1931 in all but one geographic division. An average net loss was again reported from the West North Central States.

Another indication of the effects of the past year upon the fortunes of farmers is found in the reports of 6,383 owner operators for their own farms. The average size and average property values of the reporting farms are greater than the average for all farms reported by the census. Few of the reports relate to farms of less than 50 acres, whereas size groups of 80 acres and upward are well represented. The returns cannot properly be considered as average in the sense of applying to all farmers, but they are considered to be "representative" in the sense that both large and small, profitable and unprofitable farms are included, and they are distributed over all parts of the country. The year-to-year variations in the dollar figures in table 8 and figure 5 can be used only in a broad way—not for close comparisons of absolute and relative amounts of change.

The net results presented in table 8 consist of the average gross cash receipts, minus average current cash expenses, plus the change

in inventory value of personal property. The average net results, it will be observed, are far less favorable on the whole than for the preceding year. In addition to the net results indicated, these families during 1932 used food produced on the farm to the extent of $161 and had some fuel and the use of the farmhouse.

TABLE 8.—*Farm returns: Average net result of owner operators for their own farms for the calendar years 1922–32* [1]

Geographic division	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932
North Atlantic	$836	$1,070	$1,022	$1,332	$1,166	$1,332	$1,106	$1,254	$892	$443	$180
East North Central	928	1,090	1,156	1,370	1,499	1,668	1,170	1,178	604	208	119
West North Central	1,232	1,110	1,654	1,680	1,325	1,642	1,798	1,684	895	−178	−98
South Atlantic	629	740	656	616	569	818	639	764	214	218	41
South Central	735	890	1,069	824	973	980	1,121	987	217	216	88
Western	986	1,310	1,506	2,047	1,694	2,179	2,171	1,994	868	242	178
United States	917	1,020	1,205	1,297	1,133	1,290	1,334	1,208	538	154	66
Number of reports, United States	6,094	16,182	15,103	15,330	13,475	13,859	11,851	11,808	6,228	7,437	6,383

[1] Average gross cash receipts from sales, minus average current cash expenses, plus change in inventory of personal property. The following items are not included: Interest paid, expenditures for farm improvements, estimated value of food produced and used on farms, estimated value of family labor, including owner, and estimated change in value of real estate during year. Full details have been published for each year in Crops and Markets, the latest figures in July 1933.

PROBLEMS WERE INTENSIFIED IN ALL AREAS

That the problems of the farm real estate market became more acute during the year is evidenced by reports from nearly all sections. These developments had their origin primarily in the reduced incomes of the year, which, in turn, were directly associated with lower prices rather than with decreased production. The total area harvested in 1932 was 1 percent larger than in 1931, but a little less than that harvested in 1929 or 1930. The composite yield per acre was 3.6 percent greater than in 1931, but 1.4 percent below the average of the previous 10 years. Conditions have varied from State to State, and in some States, as in Iowa and Michigan, favorable growing conditions and better-than-average yields were experienced. Some others were not so fortunate, a March freeze in Texas, low wheat yields in Kansas, and unfavorable weather in Maryland, for example, having added to the distress in their respective regions.

Price declines were such that, combined with the variations in production that occurred, gross income from farm production was lower than a year ago in each of the 48 States. The biggest drop from a year ago, 46 percent, occurred in South Dakota. By a strange coincidence the smallest decrease, 2 percent, occurred in North Dakota. The reason for the small decrease is found in the fact that income in North Dakota the previous year was very low because of unfavorable growing conditions.

In more than half the States, gross income from farm production for 1932 was from 20 to 30 percent lower than in 1931. The greatest average declines by geographic divisions were in the West North Central States, where gross income for 1932 was 33 percent less than in 1931. In the East North Central States it was 29 percent lower, and in the Mountain States 25 percent. Somewhat less severe were the declines of 18 percent in the Pacific States and 19 percent in New

England. Decreases in gross income in the South Atlantic, East South Central, and West South Central States averaged 22 percent. With this background of diminished ability to pay, financial difficulties multiplied.

With respect to new financing, the characteristic features of the situation were a scarcity of new loans, lower appraised values, and greater care generally on such loans as were made. Many of the agencies formerly active in mortgage financing had withdrawn their activities from several, if not all, regions. The Federal land banks are frequently reported as the only source of mortgage credit left for some areas. Appraisals are reported as having been cut further, and the personal qualifications of the applicant for loans were more carefully scrutinized. The volume of credit available for financing normal buying and selling of farms has thus been seriously curtailed.

Of more pressing importance were the developments respecting the handling of existing indebtedness. In this regard, also, the problems of most areas exhibited many points of similarity.

In the earlier years of the depression real estate in difficulty usually involved junior financing of some sort. The extent to which junior mortgages the country over were liquidated is not known. In Iowa, however, a recent study (*[illegible]*) leads to the conclusion that junior mortgages had been pretty well liquidated by 1930.

The renewed reduction of incomes involved an increasing number of mortgages which originally were considered as conservative investments. Foreclosures, of course, multiplied, but the increasing wave of delinquencies brought greater difficulty in realizing the indebtedness at the sheriff's sale, and mortgagees had to bid in properties with increasing frequency, with the result that they soon accumulated large amounts of distressed real estate. These in turn required management and administration. Mortgagees soon came to the conclusion that it was usually more advantageous to all parties concerned for the farmer to remain in possession than to attempt other forms of operation, and the nature of the problems involved appears to have become more generally recognized than earlier. Consequently, during the past year, it is reported that mortgagees appear to have developed a greater willingness to cooperate with mortgagors. The exact nature of the arrangements made depends to a considerable extent upon the region involved, the extent and nature of the indebtedness, the character of the mortgagor, and the policies of the mortgagee.

In many cases loans have been extended if interest and taxes were paid and if the owner prevented undue deterioration. In others the farmer has been required to pay at least the equivalent of a reasonable rent. Some cases were reported from Wisconsin in which, although loans have been extended, the farmer has been required to divide his cream check on a 50–50 basis.

Policies varied, however. From Wisconsin and Nebraska have come reports that companies have secured quitclaim deeds and sold to the original owner under a new agreement. Under this plan the new sale price may have involved a reduction of indebtedness or terms more suited to conditions. Again some creditors are said to have been willing to make substantial sacrifices to get the loans paid.

On the other hand, some mortgage-lending agencies have been reported as "hard-boiled", forcing collections by foreclosure.

The consensus of opinion of correspondents appears to be that loan companies in general are not anxious to acquire more land and for the most part are willing to cooperate with the farmer who does the best he can, but they are ready to take such steps as may be necessary to protect what they believe to be their rights and interests.

When land is acquired, differences in policy exist. The general tendency appears to be to dispose of the less desirable farms at once and to maintain the better farms in good shape for later sale. Other cases are reported of foreclosing and then selling at a loss, or permitting places to deteriorate seriously. The latter places are probably of poor quality.

The year has brought a general realization that a debt structure erected during high prices cannot be carried by a greatly reduced level of income and that restored income, or reduced debt, or a combination of the two, is essential to recovery. Working along the latter line, the Federal Government has provided legal processes designed to facilitate debt adjustment, has established machinery to assist in refinancing where it is feasible, and has embarked upon an extensive program for the purpose of raising prices paid to the farmer. The cooperation of all parties is needed to assure the ultimate solution of the problem.

REGIONAL TRENDS INFLUENCED BY DIVERSITY OF FACTORS

A general index of changing land values for any considerable geographic area reflects the composite effect of the dominant economic factors at work in the area. Where primary interest centers in the broader aspects of the subject, such an index, in which the local or transitory factors tend to average out, is essential. When the fundamental pattern is recognized, however, those interested in particular cases find it necessary to investigate certain of the more localized circumstances.

From the standpoint of the investing farmer, for example, knowledge of the general outlook for the type of agriculture in which he is interested is indispensable. In the case of wheat, such factors as production trends in other countries, prospects for the expansion or contraction of international trade, the circumstances conditioning the demand for the product, developments in the technic of production, and the competitive position of wheat as contrasted with other farm products are fundamental. In addition, however, consideration must be given to the effects which such prospective developments will have upon the various regions in which wheat production is important. A factor that operates to the advantage of one region may affect another region adversely. As such changes occur the attempt of farmers in each area to find the most advantageous combination under existing circumstances brings about shifts in production. Such changes are likely to be reflected eventually in land values.

The problems of the investor in farm mortgages are somewhat similar. Considerations affecting the safety of the investment are of prime importance. That size of farm may in certain areas be important is indicated by the experience of one large loaning organiza-

tion (*5*). It was found that relatively few foreclosures occurred in the case of small farms, but that the percentage of foreclosures increased for the larger farms. This experience is intimately associated with the character of the particular area and with the appraisal and loan policies of the organization, and is not necessarily applicable to other circumstances or areas. But it suggests that it is important to consider size of farm in relation to the characteristics of the area.

Data based upon the census afford valuable information concerning intrastate changes in land values and the effects of size and value per acre upon value trends.

During the decade 1920–30—on the whole a trying one for agriculture—there were substantial areas in which average farm-land values were higher in 1930 than in 1920, even though the average value per acre for the United States as a whole was roughly one third lower at the later date. This situation is illustrated in figures 6 and 7, which are based upon census data by counties. The predominant trend is downward, yet substantial sections of New England and other eastern seaboard States, parts of the Pacific coast and of the South, particularly western Texas, as well as several other scattered areas, experienced increasing values.

In the North Atlantic States, the more important factors involved are generally recognized. The closeness of a concentrated and growing market for food products, expanding suburban residential areas, increasing emphasis upon specialty crops, together with the abandonment of lower grade and inaccessible farms, all combined to raise the average value per acre of the area enumerated in 1930 over the acreage enumerated in 1920.

In western Texas, in Oklahoma, and in Kansas, the transition from a less intensive to a more intensive use, through the expansion of wheat and cotton to the parts of these areas to which they are respectively adapted is largely responsible for the higher average values there.

The higher acre values in Louisiana, Mississippi, and Alabama are probably partly nominal because of certain changes that were made in the procedure of the census enumeration. Whereas, for example, the average value per acre of land and buildings for Alabama, as reported by the census, was 3.1 percent higher in 1930 than in 1920, the average value per acre of land alone was 5.0 percent lower. In Louisiana the reported decrease in value per acre of land and buildings was 5.5 percent, but in land alone it was 12.5 percent. Similarly, in Mississippi, the acre value of land and buildings decreased 24.5 percent during the period, and land alone 32.8 percent. Similar relations are evident for individual counties. Of the counties in these three States reporting an average value per acre of land and buildings higher in 1930 than in 1920, the value of the land alone, with few exceptions, either increased less than land and buildings or actually decreased. In the cases of most of the counties reporting a lower average value of land and buildings in 1930, larger relative decreases were reported for land alone. These relations, together with other circumstances, suggest rather definitely that part of the reported increase in building values is nominal rather than real.

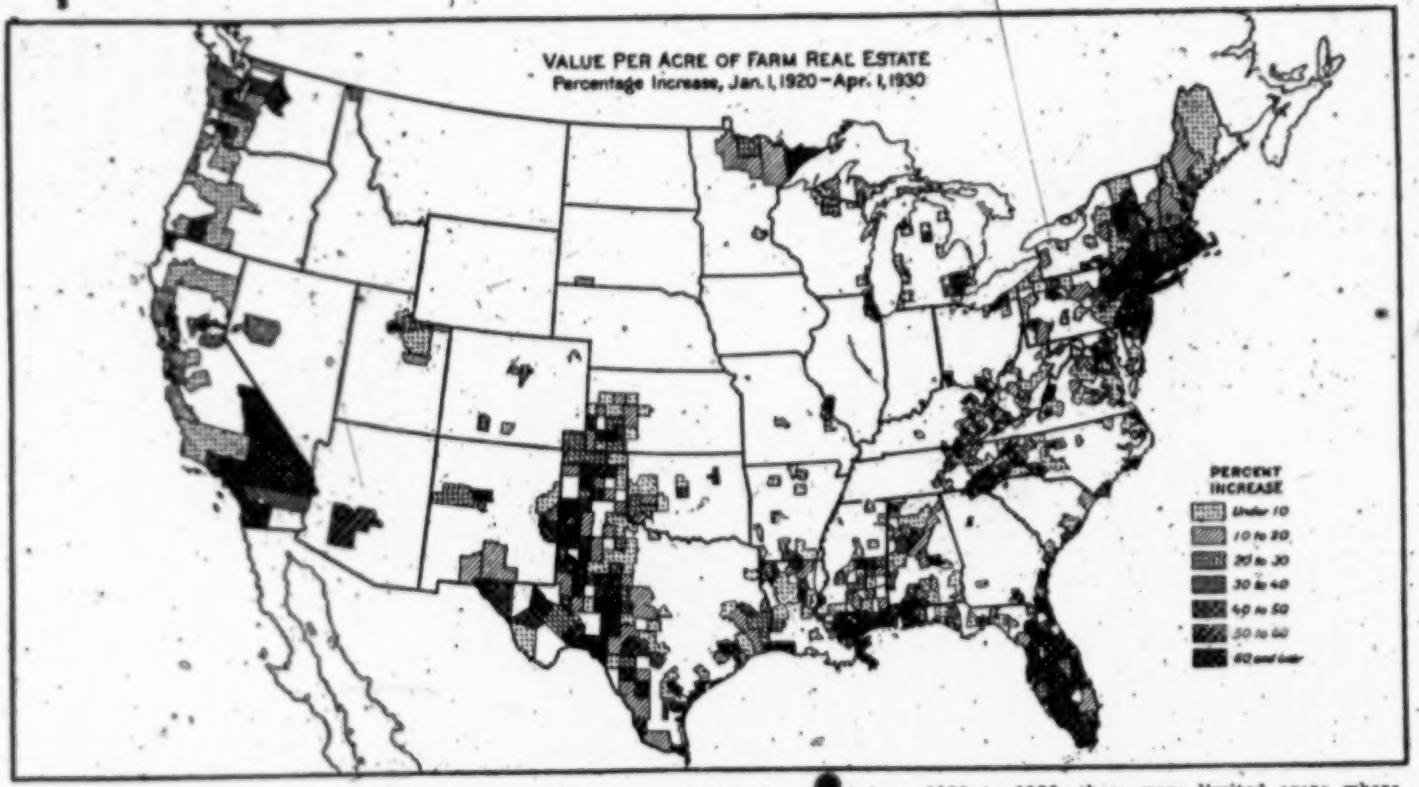

FIGURE 6.—Although the trend of farm real estate values was in general, downward from 1920 to 1930, there were limited areas where values apparently increased. Shifts in farming areas, the influence of growing cities, and the development of irrigation areas are among the local factors having significant effects upon land values.

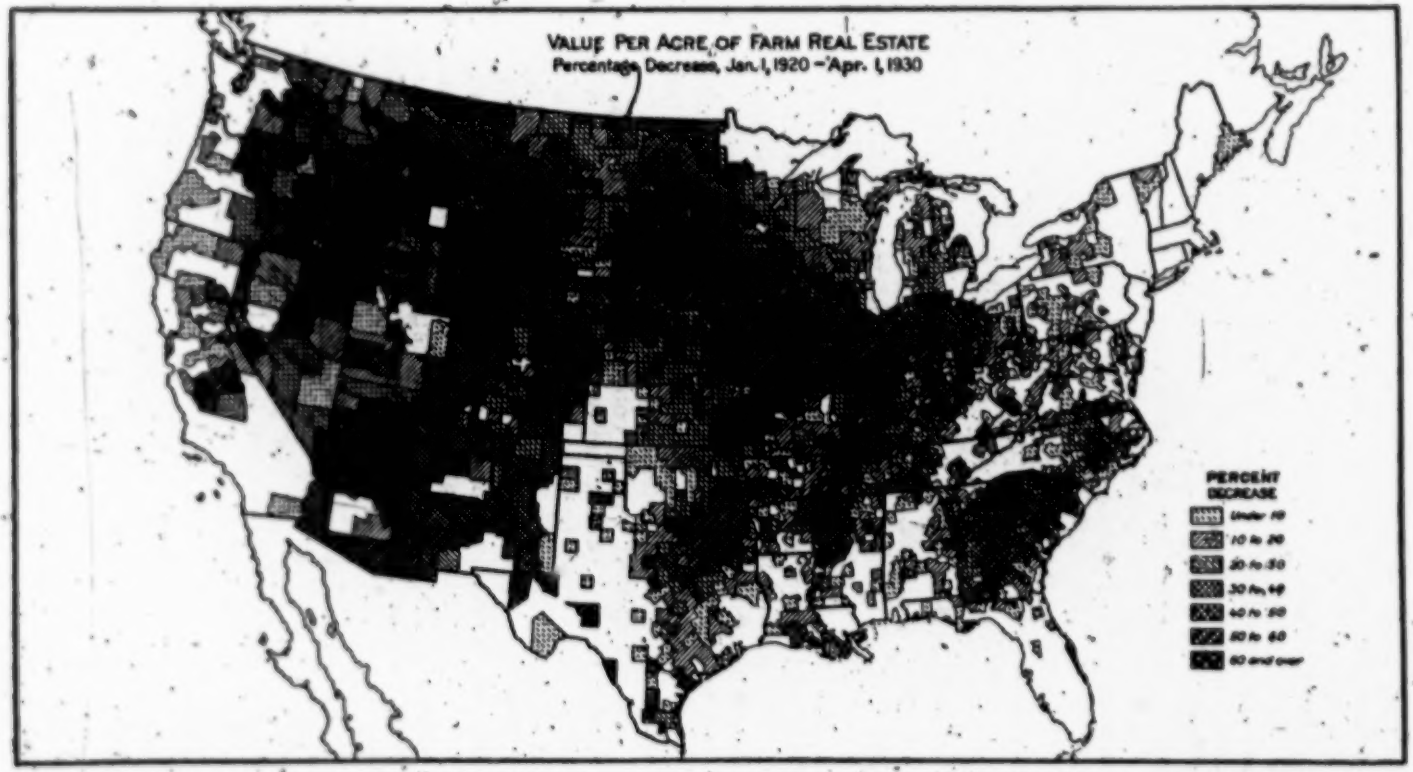

FIGURE 7.—Although farm real estate values in 1930 were in general lower than in 1920, the changes were far from uniform. There were significant differences between geographic areas, even within States, as well as between farms of different size and different grade.

It is probable, however, that part of the differences in average value of real estate indicated by the census between Mississippi and Alabama, on the one hand, and Georgia and South Carolina on the other, has real significance. Reduced yields as a result of the boll-weevil infestation were experienced by Mississippi and Alabama in the latter part of the decade 1910–20, and although the high prices increased incomes, land values in these States, especially in Alabama, did not rise so far above those of 1910 or even of 1900 as they did farther east. Consequently, higher yields in some of the later years operated in the direction of sustaining values. In Georgia and South Carolina, on the other hand, the boll-weevil struck later, and values there received the impetus from the high cotton prices before they had reflected the full effects of the weevil. Consequently, when prices fell, and as the effects of the boll-weevil accumulated, they declined more later. High prices, the boll-weevil, and depression appeared in what was apparently a more unfortunate sequence than occurred farther west. At least in 1930 land values in Georgia and South Carolina were lower relative to the pre-war level than in Mississippi and Alabama.

Several more-or-less isolated areas of increasing values appear in the neighborhood of several of the larger cities throughout the country. St. Louis, Salt Lake City, Chicago, the Twin Cities, Detroit, Cincinnati, and Cleveland stand out prominently, and several eastern cities are surrounded by such general areas of increase that individual cities are obscured. Adjacency to large cities means that farm land in the neighborhood is subjected to the combined influences of expanding suburban or residential areas, expanding requirements for industrial or commercial sites, and increasing opportunity for producing for a specialized, highly concentrated local market.

The segregation of such areas has been facilitated by a study of metropolitan areas (*15*) based on the 1930 census. The more direct effects of nonagricultural factors may perhaps be removed by considering separately on the one hand the average value of farm land in those counties parts of which are included in the metropolitan areas as defined by the census,[16] and on the other, average values in the other counties of each State. These data are presented in table 9. Comparison with earlier years is afforded by comparable data.

[16] The basis of determining these areas is explained by the following paragraph from the census: "The metropolitan districts for the census of 1930, as here presented, include, in addition to the central city or cities, all adjacent and contiguous civil divisions having a density of not less than 150 inhabitants per square mile, and also, as a rule, those civil divisions of less density that are directly contiguous to the central cities, or are entirely or nearly surrounded by minor civil divisions that have the required density."

TABLE 9.—*Farm real estate: Average value per acre in all counties, in counties partially or entirely included in metropolitan areas,[1] and in counties located entirely outside of metropolitan areas, by States, [2] 1910, 1920, 1925, and 1930*

State	1910			1920			1925			1930		
	All counties	Counties in metropolitan areas[3]	Counties not in metropolitan areas	All counties	Counties in metropolitan areas	Counties not in metropolitan areas	All counties	Counties in metropolitan areas	Counties not in metropolitan areas	All counties	Counties in metropolitan areas	Counties not in metropolitan areas
Massachusetts	$67.51	$76.06	$42.40	$99.25	$116.41	$54.49	$107.53	$126.70	$61.73	$130.20	$153.03	$73.79
Rhode Island	63.01	79.69	30.79	79.58	100.04	43.06	90.55	109.83	51.40	123.52	150.62	68.62
Connecticut	63.28	74.04	32.03	100.20	119.60	47.08	110.22	138.87	57.29	151.38	185.89	67.39
New York	53.78	94.99	42.36	69.07	118.15	55.98	70.96	130.23	57.73	73.19	130.63	59.05
New Jersey	84.36	98.44	58.29	109.67	126.22	80.28	138.42	137.91	99.20	180.99	198.99	120.89
Pennsylvania	56.01	83.71	37.93	76.14	109.49	53.89	71.81	104.07	50.97	73.58	134.58	50.77
Ohio	68.62	84.04	64.95	113.18	136.62	107.79	87.57	127.09	78.87	78.60	124.25	69.52
Indiana	74.85	88.82	73.63	126.98	139.20	124.83	85.15	111.58	82.91	71.90	102.96	69.36
Illinois	108.32	126.97	106.17	187.59	196.66	186.62	126.65	138.14	131.65	108.68	166.53	102.67
Michigan	47.58	65.19	45.47	75.48	130.16	69.65	71.20	143.64	64.16	67.80	158.22	60.25
Wisconsin	57.06	106.34	54.86	96.78	147.91	93.59	88.90	142.22	84.42	79.16	162.47	73.75
Minnesota	45.62	66.41	44.77	109.23	107.26	109.33	79.63	95.52	78.65	68.74	94.30	67.34
Iowa	96.00	124.33	94.97	227.09	261.92	225.83	146.87	190.06	147.44	134.18	181.30	122.85
Missouri	49.61	104.86	47.11	88.08	174.34	85.30	61.37	141.22	58.94	53.23	166.10	49.92
Nebraska	46.95	120.92	[illegible]	87.91	262.51	86.62	60.08	210.09	59.00	55.81	187.19	54.89
Kansas	40.05	93.[illegible]	[illegible]	62.30	129.61	60.36	50.26	119.50	48.79	48.86	122.16	47.05
Delaware	51.17	88.[illegible]	[illegible]	68.56	98.61	52.66	68.33	100.62	55.85	74.31	139.31	54.88
Maryland	47.80	71.[illegible]	37.[illegible]	61.25	105.62	70.91	77.00	113.20	62.40	81.42	126.51	63.87
Virginia	27.29	62.25	25.[illegible]	55.19	103.75	53.21	51.53	113.30	49.15	51.16	126.04	48.64
West Virginia	26.37	31.41	25.[illegible]	42.93	51.67	42.10	39.66	58.73	38.01	38.85	54.20	37.43
Georgia	17.78	32.19	17.28	44.74	72.30	43.71	26.77	48.42	25.96	26.15	62.62	24.91
Florida	22.49	59.47	20.51	46.56	109.74	43.05	81.67	225.70	71.10	84.22	233.42	77.29
Kentucky	28.64	54.60	27.34	60.39	89.67	58.98	42.56	78.28	40.92	43.73	85.53	41.69
Tennessee	23.98	58.82	22.08	52.53	97.24	49.99	42.42	87.61	39.76	41.28	98.73	38.02
Alabama	13.90	51.71	13.47	27.77	89.90	27.43	24.78	57.00	24.48	28.62	88.40	27.99
Arkansas	17.78	39.55	17.27	43.14	105.25	41.52	34.89	70.51	33.42	34.13	80.65	33.04
Louisiana	22.78	98.96	22.28	47.81	196.43	46.83	36.74	132.92	36.11	44.70	194.60	44.23
Oklahoma	25.60	28.58	25.41	42.68	50.46	42.30	33.97	43.97	33.44	36.78	45.96	36.21
Texas	16.39	23.84	16.08	32.45	92.59	31.37	27.77	38.11	26.71	28.85	91.82	27.74
Colorado	30.19	46.40	29.07	35.40	60.63	34.28	24.51	51.39	23.20	21.79	54.08	20.34
Utah	34.60	85.40	29.74	48.26	97.90	43.81	38.43	118.15	34.26	39.41	142.16	33.67
Washington	48.84	94.56	43.74	69.49	119.20	64.19	57.64	113.66	51.69	57.17	118.33	51.02
Oregon	38.99	120.05	34.49	49.86	156.28	44.84	43.60	164.51	38.15	38.12	163.36	33.43
California	51.93	107.77	38.37	104.67	202.74	81.41	11[illegible] 57	262.74	82.44	112.33	293.62	78.83

[1] Counties classified in each year on the basis of their relation to metropolitan areas in 1930.
[2] States, no part of which is included in the census category of metropolitan areas, are excluded from this table.
[3] Counties wholly or entirely included in a metropolitan area.

Table 9 illustrates one of the reasons why differences exist between an indicator of change in value based primarily upon typical agricultural land, such as the Bureau index, and relative changes as reported by the census, which includes all land in farms regardless of location. Although much land in the vicinity of cities is farmed, and enumerated by the census as land in farms, it is often held at values considerably in excess of its value for strictly agricultural purposes, because owners anticipate appreciation on account of possible residential or industrial use. Not all land near cities is thus affected, but to the extent to which this factor is operative there is a bias in estimates of change in value of strictly agricultural land based on such data.

In nearly every State in which there were metropolitan areas as defined by the census, the average value of farm real estate was greater in those counties, some part of which lay within a metropolitan area, than in those counties lying wholly without such an area. In most instances the differences were considerable. Except

in the Northeastern States, however, the area of farm land in the metropolitan areas has been so small, relative to the State total, that its exclusion usually makes only a few dollars difference in the State average, but in most States as far west as Ohio and as far south as Maryland, exclusion of such farm land makes a substantial difference in the State average.

There have been, in addition, significant differences in the rate of change of values. The decade 1910 to 1920 was one of rapid increase in value in practically all regions. In many States, particularly in the Middle West and the South, farm real estate in counties wholly outside metropolitan areas increased in value more rapidly than that in other counties.

The next decade was unfavorable to agriculture. When counties lying wholly or partially within metropolitan areas are excluded, in only 7 of the States in table 9 did average values of farm real estate increase during the decade, and 5 of these States were in the New England and Middle Atlantic groups, the other 2 being Alabama and Florida. In only 2 States, Massachusetts and Rhode Island, was the relative increase in value greater than that in the excluded counties. In all except these 7 States and Arkansas land valued primarily for agricultural purposes declined far more than farm land in the vicinity of cities. In fact, value per acre of farm real estate in many of the counties lying partially within metropolitan areas increased markedly during the decade.

These differences show plainly when the relative changes in average value from one period to another are compared, all farm real estate being used in one case, and that in counties lying partially in metropolitan areas being excluded in the other.

In Ohio, for example, the increase in average value per acre of all farm real estate from 1910 to 1930 was 14.7 percent, but if certain counties are excluded on the basis indicated, the average increase was only 7 percent. In Indiana, exclusion of the counties indicated alters the average change from a decrease of 3.9 percent to a decrease of 5.8 percent. In Michigan the average change is reduced from an increase of 42.5 percent to 32.5 percent, and in California it is changed from an increase of 116.3 percent to 97.6 percent.

In Wisconsin and in most of the west North Central, Southern, and Western States the differences in relative change are of less importance.

SIZE OF FARM AND VALUE PER ACRE AFFECT VALUE TRENDS

Not only do changing economic conditions bring about different results in different localities, but they also affect unequally farms of different sizes within the same general area. Farms very much smaller or very much larger than the typical farm usually differ in essential features of their organization from the typical farm. They are likely, therefore, to be affected by economic changes to a different degree, or even in a different direction, than the typical farm. Small farms, for example, often tend toward the truck or poultry type, whereas large farms often tend more toward livestock enterprises. Obviously, since prices of different groups of farm products do not usually change together and since considerable

shifts in farm organization cannot usually be accomplished at once, it may be expected that, in general, values of farms of different sizes will change at different rates.

That these expectations are realized is indicated in table 10, in which changes in value per acre for farms of different sizes for specified periods are presented. For the United States as a whole the average value per acre of farm land and buildings, as reported by the census, increased 75 percent from 1910 to 1920, and then decreased 30 percent during the following decade, leaving a net increase of 23 percent over the 20 years. For farms under 20 acres in size, however, the net change for the period was an 85 percent increase,[17] and for farms of 1,000 acres or over, the net increase was only 3 percent.

TABLE 10.—*Value per acre of farm real estate: Relative change for specified periods, by size of farm, for the United States and for groups of States*

Size of farm (acres)	United States			New England States			Middle Atlantic States			East North Central States			West North Central States		
	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
Under 20	62	14	85	43	43	103	25	53	92	51	26	90	64	3	69
20 to 49	85	−11	66	51	37	107	29	28	66	65	−7	54	84	−20	47
50 to 99	81	−22	41	50	29	94	37	7	48	67	−28	21	103	−36	31
100 to 174	100	−30	41	51	32	84	34	0	34	70	−37	8	134	−39	43
175 to 499	86	−32	28	53	15	78	29	−1	28	72	−41	2	108	−41	19
500 to 999	58	−30	11	56	17	85	34	30	74	59	−34	4	80	−39	3
1,000 and over	47	−30	3	75	41	146	51	47	122	58	6	69	26	−35	−19
All farms	75	−30	23	48	22	81	31	9	42	60	−34	12	91	−40	14

Size of farm (acres)	South Atlantic States			East South Central States			West South Central States			Mountain States			Pacific States		
	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
Under 20	97	10	117	120	−28	76	102	1	104	19	21	43	43	23	74
20 to 49	135	−18	92	123	−22	74	121	−14	96	42	−15	19	64	−3	61
50 to 99	121	−22	73	109	−30	67	117	−21	71	74	−28	31	99	−1	98
100 to 174	114	−23	68	113	−34	68	104	−16	73	134	−10	111	101	10	121
175 to 499	112	−21	68	114	−25	80	94	−12	70	80	−12	14	88	12	77
500 to 999	117	−15	83	117	−21	73	83	−6	71	4	−26	−23	88	−11	41
1,000 and over	87	15	116	115	−13	90	63	−7	53	28	−49	−33	59	−22	23
All farms	123	−16	87	119	−21	73	98	−13	74	22	−42	−30	72	−4	66

Based on data from the census.

If the average-sized farm may be considered as the typical farm, it may be said that in general terms the typical farm apparently increased most in value from 1910 to 1920, and decreased about in proportion to all farms in the following decade, making a net increase from 1910 to 1920 somewhat greater than the average of all

[17] In 1910 the average value per acre of farms under 20 acres in size in 1910 was $148.55, and in 1930 the average value per acre of farms under 20 acres in size in 1930 was $275.38, or an 85 percent increase. The farms included in a given size group at one census period are not necessarily identical to those in the same-size group at another census period, since buying and selling occurs more or less continually, and farms may be combined or divided.

farms. More specifically, the average-sized farm in the United States has varied from 138 acres in 1910 to 157 acres in 1930. The census-size group containing these averages is the group of farms from 100 to 174 acres in size. The average value per acre in this group doubled between 1910 and 1920 and declined 30 percent from 1920 to 1930, making a net increase of 41 percent during the two decades, in contrast to an average increase for all farms of 23 percent.

Averages for the whole United States are highly generalized. A better, but not altogether satisfactory, unit for consideration consists of the customary geographic division. It is clear from table 10 that in practically every region great variation exists in the changes of real estate values from one size group to another. Generalization is difficult since so many differences exist between the different areas.

One statement can be made, however. Small farms appear to have fared better than the average. In every area there has been, for farms under 20 acres in size, a net increase in value per acre from 1910 to 1930. In no area has the increase for all farm land been so great as for the small farms, and in one area (the Mountain States) the average for all farms has decreased, partly by reason of the inclusion in farms of more low-grade land in the later period. In the case of the East South Central States the difference is relatively small.

In the East North Central States the increases from 1910 to 1920 were fairly uniform from one size group to another. The greatest increase occurred in the 175-to-499-acre group (the average size of all farms in this region was 105 acres in 1910), and it was this same group which subsequently declined most, and which, in 1930, stood lowest relative to the pre-war base. The group of farms slightly smaller than the average (50 to 99 acres) increased very nearly the same as the all-farm average, but declined slightly less in later years, and in 1930 stood at 21 percent above the pre-war base.

In the West North Central States, where the land boom appeared in a more aggravated form, farms in the 100-to-174-acre group (somewhat below the average size, which was 210 acres in 1910) increased most in average acre value from 1910 to 1920, and the average for all farms of between 50 and 499 acres increased more than did the average of all farms. The greatest decline in value from 1920 to 1930 was in the 175-to-499-acre group, but in 1930 the average value per acre for all farms less than 500 acres in size was further above the 1910 level than the average for all farms. The value per acre of very large farms (1,000 acres and over) averaged lower than in 1910, and that of the small farms considerably higher. There were more farms of 1,000 acres or more in size in 1930 than in 1920, in part as a result of the expansion of wheat growing in the Great Plains area.

In the Southern States, the greatest increases in value per acre occurred in the case of farms less than 50 acres in size—somewhat smaller than the average for all farms. The subsequent decline in values appears to have affected the very small and very large farms least severely.

Thus, if the very small farms are excepted, there appears to have been a tendency in the North Central States for the size groups which increased most in the boom years, to decrease most in the readjustment period. It can hardly be said, however, that these groups fell lower, relative to the 1910 level, than the groups which experienced smaller increases.

Another aspect of the problem may be raised. How does the safety of an investment in high-priced land compare with that of low-priced land?

The practical importance of this question is indicated by the study of the lending operations of the Federal Land Bank of Springfield (*5*), which showed that a larger proportion of the loans made on land with a low appraised value per acre were foreclosed than on land appraised at a high value. Moreover, the net loss on farms acquired by foreclosure and sale was lower per $1,000 loaned, on farms with a relatively high appraised value per acre. This situation was attributed in part to a tendency to overvalue the poorer land. It is, of course, impossible to generalize upon the basis of a local study, but it is clear that the question is of sufficient importance to merit careful investigation.

In this regard, table 11, based on the census, affords certain comparisons. Counties were classified on the basis of value per acre of farm real estate in 1910. The average value for each county for later years was compared with the value in 1910, and the relative changes for individual counties were averaged by 1910-value groups for States and geographic divisions. In this tabulation it was necessary to reject counties whose boundaries were changed during the 20-year period covered by the table.

TABLE 11.—*Value per acre of farm real estate: Relative change for specified periods, by value per acre, 1910[1], for the United States and groups of States*

Value per acre, land and buildings, 1910	United States				New England States				Middle Atlantic States				East North Central States				West North Central States			
	Counties	Average change			Counties	Average change			Counties	Average change			Counties	Average change			Counties	Average change		
		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30
	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent
Under $10	234	113	4	114													14	117	−14	88
$10 to $24.99	1,100	108	−11	88	22	49	4	53	11	45	34	74	60	74	−11	53	140	73	−19	37
$25 to $49.99	800	83	−15	47	20	42	30	84	60	34	18	54	124	63	−15	34	170	60	−30	15
$50 to $74.99	378	85	−23	34	5	40	47	108	35	35	11	52	80	63	−27	17	147	116	−41	26
$75 to $99.99	206	85	−28	29	4	56	61	141	8	36	15	55	57	68	−33	8	78	118	−40	29
$100 to $124.99	119	87	−24	35	1	53	52	135	7	31	46	83	46	75	−32	20	80	118	−42	29
$125 to $149.99	43	75	−30	18	3	43	51	115	2	27	1	28	23	79	−43	0	10	117	−35	22
$150 to $199.99	30	56	−4	50	2	47	26	86	8	18	98	176	16	90	−46	−8	3	52	30	84
$200 and over	28	8	106	121	1	−20	63	30	11	12	124	159	8	26	82	131	1	−27	26	−6
All groups	2,927	92	−14	58	57	44	26	80	148	38	27	88	436	91	−26	23	611	99	−32	28

Value per acre, land and buildings, 1910	South Atlantic States				East South Central States				West South Central States				Mountain States				Pacific States			
	Counties	Average change			Counties	Average change			Counties	Average change			Counties	Average change			Counties	Average change		
		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30
	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent
Under $10	44	156	5	167	45	113	3	113	96	113	18	135	26	61	−55	−8	1	30	−41	−14
$10 to $24.99	202	136	−16	91	213	97	−4	85	245	122	−1	98	97	52	−36	−1	34	58	−12	45
$25 to $49.99	138	119	−6	80	73	131	−21	56	96	99	−14	61	56	39	−31	−10	45	69	−8	52
$50 to $74.99	29	71	10	74	21	122	−30	44	17	104	−26	43	14	18	−26	−10	21	71	−1	67
$75 to $99.99	7	63	30	85	5	103	−31	36	1	−56	−143	4	7	66	−13	37	13	74	13	97
$100 to $124.99	3	26	93	130	2	96	−12	84					2	37	13	38	6	43	15	67
$125 to $149.99					1	126	−16	91					2	−17	−30	−41	2	29	−11	15
$150 to $199.99	1	21	−32	−19									1	−57	−32	−70	2	108	66	262
$200 and over	1	−28	148	79					1	−15	266	212	1	−36	4	−35	6	9	80	96
All groups	513	128	−8	90	360	108	−11	79	456	114	0	94	206	41	−31	−4	130	62	0	65

[1] Counties the borders of which have been changed during the period 1910-30 have been excluded from this table.

The summary for the United States indicates that, with the exception of the few counties in which farm real estate was valued at over $150 per acre in 1910, the lower valued lands have increased more, relative to their 1910 value, than have the higher valued. Thus, in the 224 counties where real estate was valued at less than $10 per acre, values have a little more than doubled during the 20 years (that is, have increased by 114 percent, making them 214 percent of their initial value), whereas, for higher valued lands the relative increases were progressively less (with one exception). However, a 100-percent increase on $10 land is only $10, whereas a 30 percent increase on $100 land is $30, or three times as great. Hence, although the lands with lower initial value increased the most relatively, the absolute increases were in general greater for the medium and higher priced lands.

The 25 counties reporting values of $200 or more per acre in 1910 were so located that they cannot be considered as reflecting predominantly the effects of agricultural factors. All but 1 of the 25 counties either contained sizable cities or constituted the outlying parts of a large metropolitan area. For purposes of the present discussion, this group can be ruled out as not representative of typical agricultural conditions.

Considerable variation is evident from one size group to another, and from one area to another. In several of the geographic divisions, as for the United States as a whole, the lowest valued real estate has increased more in value relatively than have the other groups. Land valued at less than $10 per acre in 1910 frequently was land in a low stage of development. The addition of improvements, together with the fact that an increase of only a few dollars constituted a large percentage increase when the base is less than $10, probably explains such increases in large measure.

Excepting the extreme high- and low-value groups, there appears to have been a tendency in some areas, and with exceptions, for the groups which experienced the greatest relative increases from 1910 to 1920 to fall the most from 1920 to 1930.

In the East North Central States, for example, farms valued at $125 to $200 per acre increased more in value than most other groups, fell further on the average, and ended the 20-year period considerably lower relative to 1910, than was the case with the other groups.

In the West North Central States the $50-to-$125-per-acre farms, as a rule, increased more, subsequently declined further, and ended the 20 years lower, relative to 1910, than most of the other groups. In the South Atlantic region the $10-to-$75-per-acre farms rose most rapidly in value. Over the 1910–30 period, however, these groups showed a smaller increase in value than did the average of all counties in these States. A somewhat similar situation is indicated in the East South Central section, but does not appear so clearly in the West South Central. In the latter group particularly, the more valuable farm land (excepting the one county in the $200-and-over group) appears to have experienced the least relative increase in value.

Variation within States supports to some extent the tentative generalizations suggested. There are, however, sufficient exceptions to indicate the necessity for a more detailed study, taking account of

changing acreage, capital improvements, and transition from a less to a more intensive usage, and vice versa.

In areas such as New England and the Western States, where circumstances may vary greatly from one locality to another, the indicated changes do not represent so well the trends in value for farms of different average value as in the more uniform areas of the Middle West. In New England the abandonment of certain areas, and the suburban developments in others complicate the nature of the inferences from table 11. In the Western States, the addition of large areas to the existing farm acreage is a complicating factor. If the new land in farms is of low quality, its inclusion in the average for any county would tend to lower the average, even though the trend for the land that was in farms at the time of the earlier enumeration may have been upward. Similarly, the introduction of irrigation into a county would ordinarily raise the county average value, even though other land in the county might have declined in value. Comparison of the averages from one period to the next, under the circumstances, would not truly reflect the trend in values on a given farm.

CHANGES IN FARM OWNERSHIP

FORCED TRANSACTIONS INCREASED MARKEDLY

As the year 1932 progressed, the problems of indebted farmers and their creditors increased. Shrinking incomes meant increased delinquencies, and these in turn resulted in more foreclosure proceedings. In many instances it has been reported that creditors have felt that under the circumstances the rights of both parties would be more nearly protected if foreclosures were not pushed, but debtors given a chance to work out. The fact that the indebted farmers themselves normally would be able to operate the farms as efficiently as the average tenant who might be secured, together with the further fact that in numerous cases if the property were forced on the market it could not be disposed of for the face of the mortgage, has probably led to this conclusion.

Despite this circumstance, forced sales were far more frequent than during the preceding year (table 12 and fig. 8). The Bureau estimates that, on an average, for the whole United States, 38.8 farms out of each 1,000 were transferred through forced sale as a result of debt during the 12-month period ended March 15, 1933. This is an increase of 37 percent over the rate of 28.4 per 1,000 for the year before.

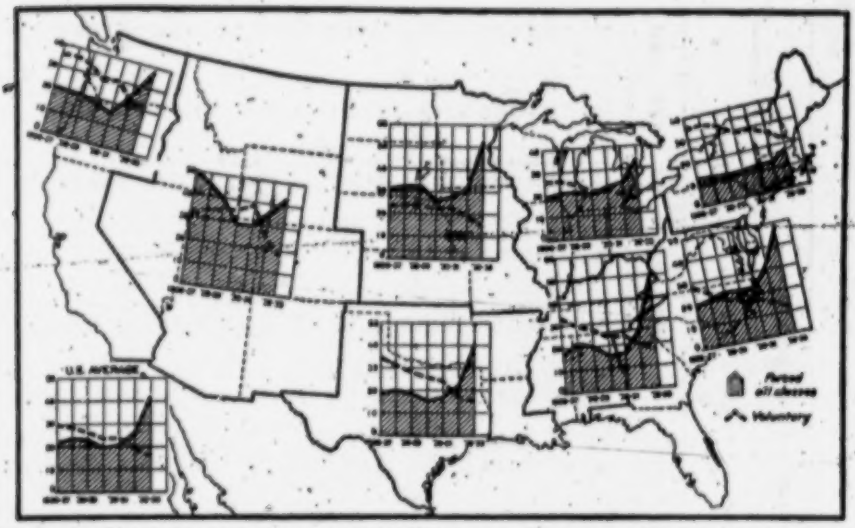

FIGURE 8.—FORCED AND VOLUNTARY SALES OF FARMS, 1926-33: NUMBER PER 1,000 FARMS, YEARS ENDED MARCH 15.

During the year 1932–33 the frequency of forced sales increased markedly in most areas. The number of voluntary sales increased slightly, principally in the South. Forced sales outnumbered voluntary sales in the United States as a whole and in every geographic division except New England.

TABLE 12.—*Number of farms changing ownership by various methods per 1,000 of all farms, by States and geographic divisions, 12 months ended Mar. 15, 1930–33*

Geographic division and State	Voluntary sales and trades[1]				Forced sales and related defaults											
					Delinquent taxes				Foreclosure of mortgages, bankruptcy, etc.[1]				Total			
	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933
United States	23.7	19.0	16.2	16.8	5.1	7.4	13.3	15.3	15.7	18.7	28.4	33.8	20.8	26.1	41.7	54.1
New England	30.7	30.7	24.8	22.5	3.9	3.4	5.2	6.6	7.3	6.3	10.3	13.2	11.2	9.7	15.5	19.8
Middle Atlantic	28.3	24.5	20.4	21.0	3.5	4.6	5.6	8.7	9.8	9.2	12.4	19.6	13.1	13.8	18.0	28.3
East North Central	20.8	18.6	16.8	15.6	4.8	4.7	6.5	5.6	17.5	19.3	27.8	38.3	22.3	24.0	34.3	43.9
West North Central	22.9	18.9	14.2	13.8	4.2	5.5	8.7	10.8	23.3	23.5	43.8	61.5	27.5	31.3	52.5	72.0
South Atlantic	13.2	14.5	12.3	15.3	8.4	12.8	21.0	27.3	14.8	19.4	28.1	32.2	23.2	32.2	47.1	59.5
East South Central	23.9	19.4	17.2	18.9	4.9	10.0	26.0	27.1	11.2	15.9	24.6	36.4	16.1	25.9	50.6	63.5
West South Central	24.2	16.7	15.4	17.6	3.4	6.1	13.2	16.0	13.4	16.3	27.0	35.2	16.8	22.4	40.2	51.2
Mountain	38.7	24.6	17.6	16.8	11.2	13.8	16.5	19.2	18.2	22.6	27.0	33.6	29.4	36.4	43.5	52.8
Pacific	30.1	22.7	22.3	21.3	3.0	5.4	10.8	8.1	12.2	19.6	26.8	36.0	15.2	25.0	37.6	44.1
New England:																
Maine	29.7	31.0	21.0	21.2	7.4	4.2	9.1	12.3	9.6	10.1	14.6	17.0	17.0	14.3	23.7	30.3
New Hampshire	21.8	27.0	30.4	27.5	5.4	7.9	9.0	8.6	5.4	3.7	7.4	15.1	10.8	11.6	16.4	23.7
Vermont	37.5	34.0	32.2	27.4	1.3	3.7	1.7	2.1	8.5	6.1	9.7	15.0	9.8	9.8	11.4	17.1
Massachusetts	28.2	23.6	22.8	20.0	2.4	1.2	2.4	3.1	7.4	4.0	8.1	10.3	9.8	5.2	10.5	13.4
Rhode Island	21.0	23.0	23.6	19.5	.8	.8	1.0	1.2	2.3	2.0	4.0	3.7	3.1	2.8	5.0	4.9
Connecticut	27.2	28.9	21.9	18.7	1.0	1.0	2.2	1.8	3.2	4.5	8.9	7.1	4.2	5.5	11.1	8.9
Middle Atlantic:																
New York	30.4	28.1	24.1	24.1	5.0	4.8	7.0	11.8	11.6	11.6	12.9	21.5	16.6	16.4	19.9	33.3
New Jersey	30.6	30.6	23.5	23.5	2.2	4.5	5.0	8.6	5.4	6.4	11.0	17.0	7.6	10.9	16.0	25.6
Pennsylvania	26.0	20.1	16.4	17.6	2.3	4.4	4.4	5.8	8.4	7.4	12.2	18.2	10.7	11.8	16.6	24.0
East North Central:																
Ohio	22.7	18.3	16.6	16.0	1.8	2.4	2.9	2.2	13.5	16.4	21.6	31.9	15.2	18.8	24.5	34.1
Indiana	19.2	17.1	16.7	16.3	7.1	7.9	11.9	6.6	20.5	19.9	30.1	38.3	27.6	27.8	42.0	44.9
Illinois	18.8	17.8	14.3	13.6	3.9	3.9	4.7	6.1	17.2	20.1	29.8	44.6	21.1	23.0	34.5	50.7
Michigan	24.9	21.9	18.5	18.1	8.9	7.8	9.4	9.3	21.2	20.7	30.6	41.1	30.1	28.5	40.0	50.4
Wisconsin	18.1	18.1	17.1	14.1	2.3	3.4	4.8	4.4	16.4	20.2	28.3	36.0	19.7	23.6	33.1	40.4
West North Central:																
Minnesota	17.7	16.8	13.9	14.3	3.7	7.7	7.4	8.1	27.9	31.2	42.9	59.1	31.6	38.9	50.3	67.2
Iowa	17.6	14.3	12.8	11.8	2.2	3.3	6.3	7.4	26.1	24.8	32.5	78.3	27.3	28.1	38.8	85.7
Missouri	26.1	21.8	18.2	20.0	5.4	4.2	8.0	8.6	24.6	23.7	42.1	51.2	30.0	27.9	50.1	59.8
North Dakota	20.5	17.9	12.4	10.7	12.2	15.9	22.0	29.6	30.1	34.1	54.0	63.3	42.3	50.0	76.0	92.9
South Dakota	21.1	18.1	9.8	10.1	7.9	10.2	18.1	23.1	27.1	33.2	49.2	73.0	35.0	43.4	67.3	103.1
Nebraska	27.8	20.2	13.5	10.7	1.1	2.8	4.6	5.7	15.9	21.8	34.4	58.2	17.0	24.4	39.0	63.9
Kansas	28.0	22.1	13.8	11.6	2.6	3.4	7.1	8.4	14.8	20.0	36.0	52.7	17.4	23.4	43.1	61.1

South Atlantic:																
Delaware	24.4	19.0	19.0	14.7	1.4	3.7	1.5	5.1	5.6	10.0	14.5	19.9	7.0	13.7	16.0	25.0
Maryland	20.6	18.8	18.8	14.2	7.2	5.5	12.0	11.0	13.4	10.6	22.3	21.5	20.6	16.1	24.3	32.5
Virginia	16.3	13.7	9.8	14.6	2.6	6.7	9.5	15.3	10.4	15.2	29.3	28.0	13.0	21.9	28.8	43.3
West Virginia	21.6	18.5	15.7	18.3	12.0	19.1	22.5	49.5	7.5	9.0	12.9	17.6	19.5	27.1	45.4	67.1
North Carolina	19.1	16.5	11.0	13.5	10.8	22.3	35.6	45.8	15.0	20.0	32.6	40.8	25.8	42.3	68.2	86.6
South Carolina	14.2	9.7	11.0	13.7	15.5	17.0	25.0	21.6	25.0	22.0	28.8	28.6	40.5	49.0	53.8	60.2
Georgia	17.5	10.9	10.6	16.2	5.5	5.9	10.0	13.7	18.5	27.4	26.8	34.9	24.0	33.3	39.8	48.6
Florida	20.5	19.8	21.0	22.3	5.1	2.3	11.8	22.9	8.0	4.0	6.7	25.1	13.1	7.3	18.5	46.0
East South Central:																
Kentucky	20.0	27.2	19.0	21.0	6.4	10.3	21.9	17.0	12.6	12.1	17.9	31.0	19.0	22.4	29.6	46.0
Tennessee	18.5	16.7	18.0	19.5	2.3	3.6	10.1	14.5	9.8	10.9	23.0	34.2	11.1	14.5	33.1	46.7
Alabama	20.6	15.4	15.6	16.5	1.5	5.5	15.9	19.9	9.7	22.6	27.0	36.2	11.2	28.1	42.8	56.1
Mississippi	20.1	16.2	15.2	17.9	10.5	23.8	65.8	67.7	14.7	30.4	34.1	47.6	24.8	44.2	90.9	115.3
West South Central:																
Arkansas	27.7	19.1	19.6	23.9	4.3	8.3	27.8	27.2	16.3	18.6	32.7	36.9	20.6	26.9	60.5	64.1
Louisiana	28.8	22.5	15.5	17.8	7.6	7.4	22.3	42.6	14.2	14.4	23.5	32.8	21.8	45.8	75.4	
Oklahoma	22.9	15.3	15.4	17.6	3.4	9.8	17.2	19.6	18.2	22.4	30.5	44.7	21.6	22.2	47.7	64.3
Texas	22.0	14.7	13.6	14.8	1.8	2.9	2.3	2.3	9.6	12.8	23.6	30.5	11.4	15.7	25.9	32.8
Mountain:																
Montana	40.6	21.0	15.0	15.5	22.0	29.1	35.0	28.1	25.1	31.1	34.6	39.8	47.1	60.2	69.6	67.9
Idaho	30.4	24.6	18.4	17.5	9.8	16.7	18.1	16.9	20.9	20.8	26.2	30.1	30.7	37.5	46.3	41.0
Wyoming	42.3	29.0	22.5	14.7	13.1	10.4	14.9	18.1	17.3	20.1	26.3	23.2	30.4	30.5	41.2	41.3
Colorado	39.5	24.5	16.0	15.8	9.4	5.9	11.0	28.3	13.8	20.9	27.5	45.2	28.2	28.2	38.5	74.8
New Mexico	44.2	34.4	22.0	19.2	4.1	3.9	3.7	7.5	12.4	22.3	20.1	26.4	16.5	26.2	23.8	33.9
Arizona	41.1	31.9	22.5	18.2	1.7	7.5	8.2	7.9	19.3	23.4	32.1	26.2	21.0	22.9	40.3	34.1
Utah	27.2	14.7	13.1	12.4	10.9	16.9	14.0	15.6	8.3	16.1	17.2	21.8	19.2	33.0	31.2	37.4
Nevada	29.5	31.2	23.7	14.2	1.2	4.9	10.0	5.2	12.0	21.0	25.0	22.0	13.2	25.9	35.0	27.2
Pacific:																
Washington	29.6	25.3	18.4	18.1	5.7	9.8	12.5	10.4	13.4	18.6	24.0	34.1	19.1	28.4	36.5	44.5
Oregon	38.9	34.9	27.6	25.4	3.7	7.0	9.5	7.8	11.2	13.4	22.3	33.5	14.9	20.4	31.8	41.3
California	26.7	18.1	22.8	21.4	1.3	2.3	10.4	7.0	12.0	22.6	30.2	36.0	13.3	24.9	40.6	45.0

[1] Including contracts to purchase (but not options).
[2] Including loss of title by default of contract, sales to avoid foreclosure, and surrender of title or other transfers to avoid foreclosure.

TABLE 12.—*Number of farms changing ownership by various methods per 1,000 of all farms, by States and geographic divisions, 12 months ended Mar. 15, 1930–33*—Continued

Geographic division and State	Inheritance and gift				Administrators' and executors' sales [1]				Miscellaneous and unclassified				Total all classes			
	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933
United States	9.3	9.4	10.4	13.1	6.1	5.7	6.2	7.0	1.6	1.7	2.2	2.6	61.5	61.9	76.6	93.6
New England	10.3	8.8	10.2	11.9	6.1	5.6	6.9	7.1	1.9	1.3	2.1	2.2	60.2	56.1	80.5	83.5
Middle Atlantic	8.2	8.5	9.0	11.2	7.0	7.0	6.1	7.9	1.4	1.7	1.8	1.5	58.0	55.5	55.3	69.9
East North Central	9.4	9.3	11.0	13.3	7.8	7.5	8.1	7.6	1.3	1.8	2.2	2.3	61.6	60.9	72.4	82.7
West North Central	9.8	9.7	9.8	12.9	6.2	5.4	4.9	6.1	1.6	1.5	2.4	2.3	68.0	66.8	83.8	107.1
South Atlantic	11.4	12.5	13.3	16.7	7.9	6.5	8.1	10.2	2.0	2.6	2.6	3.2	62.7	68.3	83.4	104.9
East South Central	9.3	9.9	11.1	13.7	5.8	5.6	6.2	7.5	1.4	1.8	2.1	3.0	56.9	62.6	87.2	106.6
West South Central	7.6	7.4	8.8	11.8	3.3	3.4	4.9	4.8	1.4	1.7	2.0	2.9	58.3	51.8	71.3	88.3
Mountain	7.0	6.9	7.8	9.5	4.7	3.6	4.5	4.1	1.9	1.1	2.1	2.2	61.7	72.8	75.5	85.4
Pacific	7.3	6.6	7.5	11.2	3.6	3.6	4.3	3.9	1.4	.8	2.0	2.2	57.6	58.1	73.7	82.7
New England:																
Maine	13.0	9.4	11.2	14.8	4.5	3.5	6.8	6.8	2.3	1.4	3.2	1.6	66.5	59.8	68.9	74.7
New Hampshire	7.4	9.6	13.9	14.0	4.9	7.4	11.4	9.6	2.1	2.1	4.3	3.8	57.0	67.7	76.4	78.6
Vermont	7.7	6.7	10.1	10.1	12.0	7.5	9.0	9.6	2.0	1.0	2.4	2.8	68.0	59.0	65.1	67.0
Massachusetts	9.6	8.4	8.0	11.3	5.0	6.8	2.5	6.1	1.9	1.0	3.5	1.8	54.5	47.0	47.3	52.6
Rhode Island	7.0	5.3	4.7	7.6	2.0	3.2	4.7	5.0	.3	0	2.5	.5	43.4	34.3	40.5	37.5
Connecticut	12.0	10.7	9.0	7.5	5.6	4.6	7.9	3.9	1.3	1.4	2.4	2.4	50.2	51.1	51.6	41.4
Middle Atlantic:																
New York	8.1	9.7	9.0	13.0	5.9	5.5	4.9	6.6	1.3	1.6	1.9	1.9	62.3	61.3	59.8	78.9
New Jersey	6.2	4.6	5.0	8.8	5.7	9.3	5.0	8.3	.7	1.0	1.0	1.5	50.8	50.4	50.5	67.7
Pennsylvania	8.5	7.9	9.6	9.9	8.2	8.1	7.5	9.0	1.5	1.9	1.9	1.2	54.9	49.8	52.0	61.7
East North Central:																
Ohio	9.6	8.3	13.1	14.8	8.4	8.8	9.2	9.8	.9	2.0	1.4	1.8	56.8	56.2	64.8	76.5
Indiana	11.2	12.7	13.7	15.0	10.2	8.7	11.5	9.8	2.2	1.2	3.1	2.6	70.4	67.5	87.0	98.6
Illinois	12.7	11.0	12.4	15.7	9.6	9.7	7.4	7.5	1.0	1.0	2.5	2.0	62.2	62.5	72.1	89.5
Michigan	7.5	7.4	9.7	10.8	5.6	4.2	6.8	4.7	1.0	1.5	2.7	2.7	69.1	63.5	77.7	86.7
Wisconsin	5.5	6.8	5.4	9.1	4.6	5.1	5.1	5.5	1.8	1.9	1.6	2.5	49.7	55.5	62.3	71.6
West North Central:																
Minnesota	8.8	11.0	10.0	12.5	5.3	6.3	4.7	5.7	2.1	1.6	3.4	2.3	65.5	74.6	82.3	102.0
Iowa	9.1	8.5	12.1	13.0	7.4	6.6	6.2	6.1	1.7	1.2	2.8	2.7	63.1	58.7	92.7	119.3
Missouri	12.0	10.8	10.4	13.8	5.5	3.6	4.5	6.7	1.7	1.0	2.6	2.7	75.3	56.1	85.8	103.0
North Dakota	7.6	6.6	6.4	9.9	4.5	4.0	2.5	5.3	1.5	2.7	2.0	1.9	82.4	81.2	100.3	126.7
South Dakota	9.1	9.4	7.4	11.2	5.8	3.9	2.4	5.0	1.6	1.6	2.0	1.6	72.4	78.4	89.9	131.0
Nebraska	8.7	9.6	9.4	14.3	7.1	6.9	5.7	5.6	1.3	2.4	1.4	1.5	61.9	62.5	82.0	94.0
Kansas	10.7	10.1	9.0	13.1	7.2	6.2	4.6	6.6	1.2	1.2	1.3	2.1	62.5	63.0	71.8	94.5
South Atlantic:																
Delaware	5.0	12.5	15.2	15.8	11.8	15.5	12.4	12.9	.2	0	1.4	1.9	48.4	60.7	64.0	70.3
Maryland	11.7	9.6	10.4	12.1	10.2	6.4	8.8	11.7	2.0	3.0	2.3	2.5	65.1	53.9	74.6	73.0

Virginia	10.1	12.0	14.6	16.2	7.1	7.9	10.8	11.7	1.5	3.0	1.6	3.8	48.0	58.5	75.6	89.6
West Virginia	13.7	12.0	15.4	14.7	5.5	4.7	6.2	7.4	2.5	1.5	3.8	1.8	64.8	63.8	86.5	109.3
North Carolina	12.7	18.3	16.0	20.6	8.7	7.0	7.2	11.4	2.6	4.0	3.4	3.4	68.9	88.1	105.8	135.5
South Carolina	13.3	9.7	12.9	16.5	7.3	6.0	9.8	9.1	1.1	2.0	3.3	3.6	76.4	76.4	90.8	103.1
Georgia	10.2	9.4	9.0	15.5	9.7	7.1	6.5	9.8	2.8	2.3	2.3	3.6	64.2	63.0	65.2	92.7
Florida	6.8	8.7	9.6	12.8	4.1	1.1	5.3	6.4	.5	0	.5	2.1	45.0	36.9	54.9	89.6
East South Central:																
Kentucky	12.1	11.9	10.7	16.8	8.4	6.1	5.1	8.4	2.0	2.0	1.6	2.6	71.5	69.6	76.2	96.8
Tennessee	9.1	8.7	11.8	13.2	5.7	5.4	8.4	7.5	1.8	2.0	2.3	2.9	46.2	47.3	73.6	91.8
Alabama	6.8	9.9	12.0	12.5	3.8	5.9	3.8	6.8	.8	.9	1.2	3.2	43.2	60.2	75.4	98.1
Mississippi	8.2	8.5	9.5	11.1	4.2	5.0	7.7	6.9	.8	2.4	3.6	3.3	64.1	76.3	135.9	154.5
West South Central:																
Arkansas	7.5	7.7	7.5	10.8	3.3	4.0	4.1	5.4	1.8	2.9	2.2	3.9	60.9	60.6	93.9	108.1
Louisiana	12.7	15.0	17.2	15.4	6.7	8.0	9.9	6.7	.9	2.6	3.4	3.3	70.9	69.9	91.8	118.6
Oklahoma	5.6	7.4	7.5	9.5	2.4	3.5	4.8	5.4	.7	1.7	1.4	3.1	53.2	60.1	76.8	99.9
Texas	7.4	8.2	7.9	12.4	2.8	2.0	3.9	3.8	1.7	.9	1.8	2.3	45.3	38.4	53.1	66.1
Mountain:																
Montana	7.0	8.1	5.6	6.9	5.3	4.7	2.0	5.8	1.9	2.1	1.1	2.6	107.9	96.1	94.3	98.7
Idaho	6.1	6.8	4.4	5.6	4.0	1.6	4.9	3.4	1.7	.7	.4	1.7	72.9	71.0	74.4	72.2
Wyoming	6.4	4.4	10.7	8.8	5.2	4.5	4.7	4.4	1.4	0	3.3	3.4	85.7	68.4	82.4	72.6
Colorado	9.0	7.5	6.6	10.8	5.8	4.9	4.0	4.2	3.2	.4	3.1	2.4	85.7	63.5	68.2	110.4
New Mexico	7.3	4.9	9.3	11.7	2.0	2.2	6.2	2.2	1.8	1.6	3.8	2.6	71.8	60.3	65.1	69.6
Arizona	6.2	9.2	12.1	12.3	3.4	6.8	4.3	4.9	1.0	0	3.8	1.8	72.7	80.8	83.0	71.3
Utah	4.0	6.5	14.0	9.8	5.7	1.7	6.1	4.0	.5	1.0	1.3	1.3	56.6	57.8	65.7	64.9
Nevada	7.0	6.8	10.8	8.8	2.8	6.8	3.9	3.0	1.2	0	1.5	1.5	53.7	70.7	74.9	54.7
Pacific:																
Washington	6.2	7.9	8.1	10.9	4.0	4.3	3.3	3.4	2.2	1.1	2.5	2.4	61.2	67.0	68.8	79.3
Oregon	9.0	7.1	8.6	11.6	3.6	3.1	4.2	3.9	.6	.9	1.0	1.8	67.0	66.4	73.2	84.0
California	7.1	5.7	6.7	11.1	3.3	3.5	4.8	4.1	1.3	.6	2.2	2.3	51.7	49.8	76.6	83.9

[1] Including all other sales in settlement of estates.

In some areas the number of distress sales far exceeded the United States average. In the Middle West particularly, they were numerous, for that is the region in which the mortgage debt is most concentrated and in which prices of farm products have been particularly unsatisfactory. The highest rate of forced sales, other than tax sales, was found in Iowa, where the estimated rate was 78.3 farms per 1,000, as compared with 52.5 for the previous year. Judgments in farm-mortgage foreclosure in 15 Iowa counties during the first 11 months of 1932 were 67 percent greater than during the entire year of 1931, the totals for the 2 periods having been $11,070,851 and $6,616,201, respectively (*11*). South Dakota, with a rate of 78 farms per 1,000 as compared with 49.2 the previous year, North Dakota with 63.3 as compared with 54, Minnesota with 59.1 against 42.9, and Nebraska with 58.2 in comparison with 34.4 the previous year, were not far behind.

Considered by geographic divisions the highest average forced-sale rate, 61.5 per 1,000 farms, was reported for the West North Central States, in comparison with 43.8 per 1,000 farms for the previous year. The lowest average rate was reported from New England, with 13.2 per 1,000 farms, and the next lowest was a rate of 19.6 per 1,000 farms, in the Middle Atlantic States. These compare with 10.3 and 12.4, respectively, for the previous year.

Averages for other geographic divisions ranged from 32.2 per 1,000 farms for the South Atlantic States to 38.3 for the East North Central, all, however, representing considerable increases over the previous year. The higher rate in the West North Central States is due in part to the greater concentration of mortgage indebtedness in that region. If the figures cited, which are relative to all farms, are adjusted on the basis of percentage of farms mortgaged, the result is an estimate of the number of forced sales per 1,000 mortgaged farms. The rates per 1,000 mortgaged farms [18] for the year ended March 15, 1933, are as follows: New England, 30.3; Middle Atlantic States, 48.6; East North Central States, 83.6; West North Central States, 112.4; South Atlantic States, 119.3; East South Central States, 117.0; West South Central States, 87.3; Mountain States, 70.4; and Pacific States, 69.5; and the United States average, 92.4.

The extent to which the total quantity of land held by loan agencies has been increased as a result of foreclosures during the year is not known. Some sales, as noted later, have been occurring, but the addition to total land held is a net figure, after allowing for sale of foreclosed property and for redemption by the original owner. It may be mentioned that the book value of real estate owned outright by the Federal land banks [19] (*20*) increased 61.8 percent from March 31, 1932, to March 31, 1933, as compared with an increase of 39.1 percent during the preceding year. The corresponding increase (*17*, *20*) from June 30, 1932, to June 30, 1933, was 52.6 percent.

[18] Adjusted on the basis of percentage of farms reported mortgaged by the 1930 census, the latest available data.

[19] [U.S. TREASURY DEPARTMENT, FEDERAL FARM LOAN BOARD.] FEDERAL LAND BANKS. CONSOLIDATED STATEMENT MAR. 31, 1933. . . . 43 pp. [Mimeographed.]

In Iowa an investigation [20] reported that corporate holdings of land in 54 counties studied amounted, in the first quarter of 1933, to 1,362,929 acres, or 7.2 percent of all land in farms in these counties. Over 95 percent of this total was held by financial institutions, and the remainder was held by colleges and miscellaneous corporations.

In general, the concentration of corporate-owned land was greater in counties with low value per acre than in the counties with higher-valued land.

Of the total corporate-owned land, insurance companies held 47.8 percent, deposit banks (including closed banks) held 22.5 percent, land-investment companies held 11.7 percent, the joint-stock land banks 8.2 percent, mortgage companies 2.4 percent, and the Federal land banks held 2.3 percent. Holdings of insurance companies are not out of proportion to the volume of their mortgage loans.

The avalanche of foreclosures brought cooperation among farmers in efforts to protect what they believed to be their interests, and at the turn of the year a wide variety of methods were being tried.

In Iowa a procedure was suggested by which the creditor and debtor might agree upon a sliding scale of interest payments, based upon an index number of prices of farm products.[21] This plan, in its essence, recognized one of the fundamental situations involved in long-time financing—that neither party to the contract knows whether the sum of money to be paid back will have the same, a greater, or a lower value in terms of what it will buy than the sum of money borrowed. If, for example, a man lends $1,000 he foregoes the ability to command in the market certain quantities of goods, which of course, constitute the real things which can be consumed or used in further production. If, during the period of the loan, the general price level doubles, the sum of money paid back at the maturity of the loan will command only half as much, measured in goods, as the money loaned. The borrower is able to discharge his debt with half the quantity of goods, which, in essence, were loaned him.

If, on the other hand, the price level declines 50 percent during the period of the loan, the sum of money returned will command twice as much, measured in goods, as that loaned. The borrower must repay, in essence, twice as much goods as he borrowed. Interest in either case consists of a percentage of the face of the loan. In the first case, one party loses; in the second, the other loses.

The plan mentioned above recognizes this situation as a fundamental problem in long-term financing, and attempts to resolve it in such a manner that, at least so far as interest is concerned, the payment for the use of funds shall be such as to give neither borrower nor lender a substantial advantage through changes in price levels. Application of the method to interest alone does not, of course, provide a remedy so far as principal is concerned.

In some cases where foreclosure proceedings have been instituted, counsel for the debtor is reported to have requested that "instead of the court ordering immediate foreclosure, it should render equity and justice to the debtors by continuing the cases to such time as farm

[20] MURRAY, W. B. and BENTLEY, R. C. CORPORATE-OWNED LAND IN IOWA. A PRELIMINARY REPORT. Iowa Agr. Expt. Sta., 23 pp., illus. July 1933. [Mimeographed.]

[21] See footnote 10, p. 16.

prices more nearly balance with the time at which the mortgage was made", and Supreme Court opinions have been cited as a basis for a court in equity's refusing an action that would result in "peculiar hardship, unconscionable advantage and oppression" (*1*).

In other cases sales were prevented, at least temporarily, by means of force. The frequent mention of such cases in the daily press evidenced the growing concern of farmers for their neighbors who were foreclosed upon. The possibility of deficiency judgments, especially, appears to have given rise to much apprehension.

Another development during the period has been the "98-cent sale", in which property was bid in at merely nominal figures, and afterward often turned back to the former owners. This procedure soon met with legal obstacles, at least one judge having announced that he would refuse to confirm future real estate foreclosures unless the property brought an amount sufficient to cover the mortgage, and the attorney general of Nebraska, according to the press, having said that "courts would declare void sales at which crowds of farmers, seeking to protect neighbors from dispossession, thwart foreclosure by 'penny' bids."

In Wisconsin, according to the press, two judges in one district announced that where no defense had been made, decrees of foreclosure would not be issued, nor would foreclosure sales be confirmed.

Concurrently with these developments, tension was increasing and in several States led to gubernatorial proclamations having for their purpose the restriction of foreclosure actions. The announcement by the New York Times on January 31 and February 1, 1933, that leading life insurance companies had decided to suspend foreclosure proceedings temporarily, except in most extreme cases, appeared to help relieve the tension that had been developing under the feverish attempts toward liquidation.

Another phase of the situation was the growing pressure upon legislative bodies for relief. A wide range of proposals were brought forward, including moratoria, refinancing plans, the empowering of courts to continue foreclosure suits, the placing of restrictions upon deficiency judgments, the levy of a tax upon foreclosures, the extension of the period of redemption, and the providing of committees to assist debtors and creditors in reaching compromise agreements.

In some States laws were passed, embodying various proposals. For example in Wisconsin [2] and South Dakota, legislation provided for extending the redemption period 1 year under certain conditions. Also in Wisconsin new legislation concerning mediation or arbitration of mortgage disputes before court action and affecting deficiency judgments was added to the statutes. In Iowa, new legislation granted to courts the authority to grant continuance of foreclosure actions until March 1, 1935, and makes such continuance mandatory unless good cause for different action is shown.

Newly enacted legislation in Nebraska provided a 2-year moratorium on real estate mortgage foreclosures, but within a month after the enactment a court held that the law impaired the obligation of a contract and was therefore unconstitutional.

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[2] DUNCAN, L. O., OLCOTT, M. T., and CARPENTER, M. P. STATE MEASURES FOR THE RELIEF OF AGRICULTURAL INDEBTEDNESS IN THE UNITED STATES, 1932 AND 1933. U.S. Dept. Agr., Bur. Agr. Econ. Agr. Econ. Bibliog. no. 45, 64 pp. 1933. [Mimeographed.]

Governors of several States, seeking to relieve the growing tension, issued proclamations forbidding foreclosures or requesting a cessation of such action. In some cases the proclamations were for limited periods or until legislation could be passed.

Federal interest in the farm-debt situation was evidenced by the subscription in 1932 of $125,000,000 additional capital to the land banks, and again by the enactment of an important piece of legislation dealing with the farm-debt problem. This law (Pub. Doc. no. 420, 72d Cong.) provided facilities whereby farmers may obtain a hearing of their indebtedness problems for the purpose of enabling them to carry on operations even though temporarily unable to meet their obligations (*22*).

Other legislation of far-reaching import became law on May 12, 1933, and provided for further Federal assistance in agricultural financing under a consolidated Farm Credit Administration.[23]

REGIONAL INVESTIGATIONS PROVIDE FORECLOSURE DATA FOR EARLIER YEARS

The Bureau's data on changes in farm ownership are not available for periods before the year ended March 15, 1926, and therefore do not provide a basis for comparing the present with earlier distress periods, as, for example, that of the 1890's.

Recent investigations in several States (*6*, *7*, *9*, *10*, *11*, *21*) make possible a limited comparison with earlier years. Figure 9 presents these data, reduced to the basis of number of farms foreclosed per 1,000 of all farms, for comparison.

The data for this chart are based primarily upon tabulations made from official sources, principally the records of the county recorders' offices.

In Minnesota, the available data (*6*) relate to four counties—Polk in the northwestern, Stearns in the central, Lincoln in the southwestern, and Mower in the southeastern part of the State. The data apply to farms sold at sheriff's sale in these counties, and were obtained from county records. They do not necessarily include all farms lost to owners on indebtedness, for, as indicated by studies elsewhere, many farmers have simply deeded their farms to creditors without the foreclosure procedure.

The Ohio (*21*) data relate to three counties in western Ohio, which are regarded as fairly typical of the section—Putnam, in the northwestern part of the State, Union, a little west of the center, and Greene, in the southwest. Data apply to property sold at foreclosure. Similar data for property foreclosed by financial institutions alone, together with information as to number of farms and acreage voluntarily assigned to such institutions, were also secured.

Information for Brookings County, S.Dak. (*7*), which is on the eastern border of the State, approximately midway between the northern and southern boundaries, applies to the period 1881 through 1932. For 1881–1930 data were compiled from private abstract books, and for 1931 and 1932 from records of the office of the register of deeds. Data for 44 (out of a State total of 69) counties

[23] A useful pamphlet, Farm Mortgage Loans by the Federal Land Banks and the Land Bank Commissioner (*18*), has been issued by the Farm Credit Administration and may be had upon application to the Farm Credit Administration, Washington, D.C.

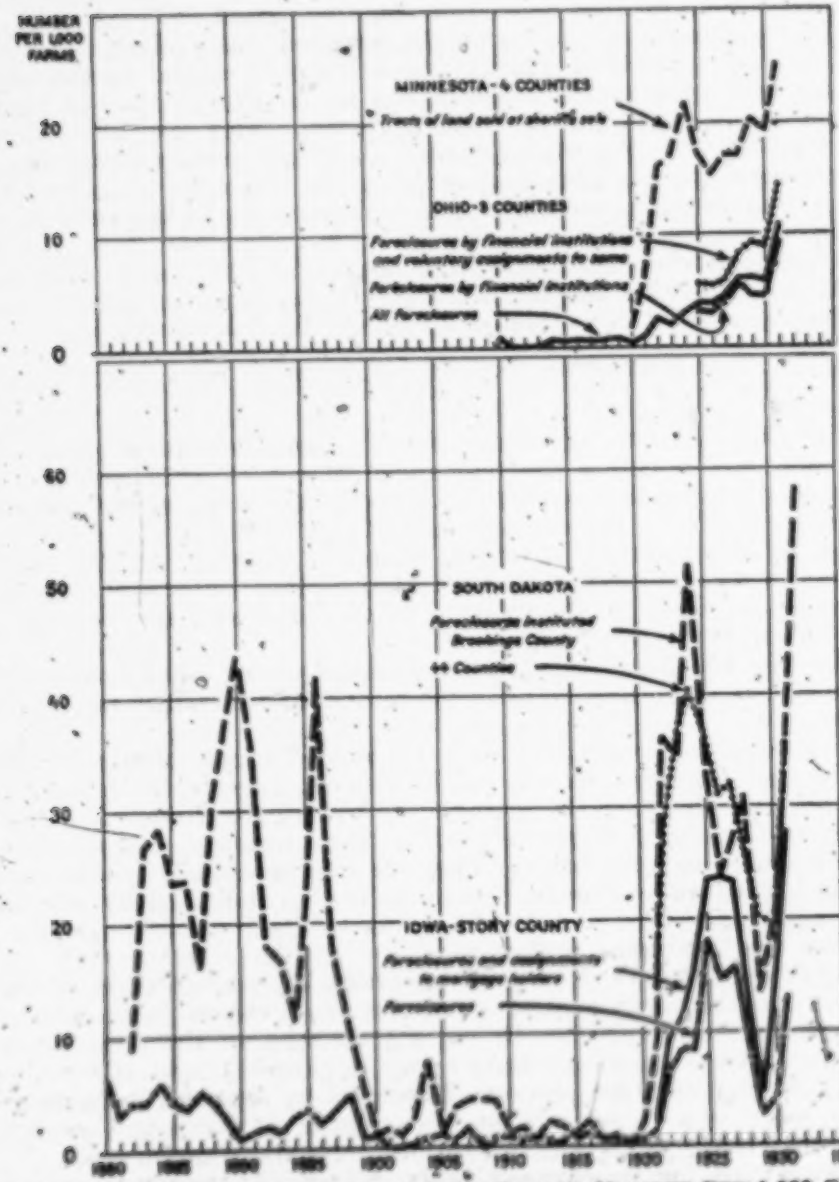

FIGURE 9.—FORCED SALES OF FARM REAL ESTATE: NUMBER PER 1,000 FARMS IN SELECTED COUNTIES OF FOUR STATES.

Foreclosures of mortgages were relatively infrequent from 1900 to 1920, but in the years since 1920 a large number of farms have been lost to their owners. In South Dakota approximately 1 out of 3 farms has been involved in foreclosure since 1920, and in Story County, Iowa, 1 out of 6 farms has either been foreclosed or assigned since 1920 (assuming that individual farms have not been involved in more than one foreclosure and that each foreclosure represents a whole farm).

from 1921–31 were compiled from records of the register of deeds (Brookings County is included as 1 of the 44 counties). For the years 1921–30, data from the two sources are available for Brookings County. In most years compilations from private abstract books showed a slightly higher number of foreclosures, although the trends in both cases are essentially similar.

Story County, Iowa, is located practically at the center of the State, and is typical of the level central and northwestern sections of Iowa with high land values. The average value per acre of farm real estate in 1930 in Story County was $154, and the State average was $124. Information on number of foreclosures is available from 1854 (the county was organized in 1853) through 1931 (*9*). The first foreclosures occurred in 1857, 4 years after the first mortgage was recorded.

Figure 9 portrays the tremendous increase in foreclosures that has occurred since 1920. Although only three series are available prior to 1920, and only two prior to 1910, these latter two, Story County, Iowa, and Brookings County, S.Dak., indicate that during the whole period 1900 to 1920, foreclosures were relatively few, in several years amounting to only 1 or 2 per county. In 1904, a year of low wheat yields in South Dakota, there were 13 foreclosures in Brookings County. In the three Ohio counties there were very few foreclosures from 1910 to 1920.

Prior to 1900 in Brookings County, and prior to 1880 in Story County, the number of foreclosures per 1,000 farms was large. During these earlier periods, however, the counties were being settled, the number of farms was smaller than in recent years, and conditions were considerably different from those of a settled and more mature community. The fact that the years of numerous foreclosures differed so greatly between Iowa and South Dakota in the earlier periods, whereas in recent years the rates have been high in both, suggests that the less stable conditions of a community in process of being settled may be responsible in part for the high rates in South Dakota in the 1880's and 1890's, and in Iowa for certain years prior to 1880. For this reason the foreclosure rates of these pioneer periods are not altogether comparable with those of the present. With the passing of 1900, both sections were pretty well through the pioneer stage, and the data are more nearly comparable.

The sharp rise in distress transfers of farm real estate since 1920 is ample proof of the intensity of the readjustments that have been forced as accompaniments of the drastic changes in price levels and other adjustments of the period. It will be observed that the first peak of foreclosures was reached in certain of these areas in 1924 and 1925, and that in Iowa and South Dakota there was a downward trend till 1929 and 1930, when the number of foreclosures shot upward again. In the four counties of Minnesota the low point was reached in 1926 and was followed by a renewed upward trend. The available Ohio data, however, indicate a continuous upward trend in distress sales after 1920. Except for Brookings County, S. Dak., data for 1932 were not available from these sources. That year was shown in table 12 to be one in which there were further increases in the rate of foreclosures. The same tendency for Brookings County is evident from the chart.

The real import of these data is more clearly evident if the cumulative number of foreclosures over a period of years is considered. In Story County, for example (assuming that individual farms have not been involved in more than one foreclosure and that each foreclosure represents a whole farm rather than only a part of a farm), at least 1 out of 6 farms, on an average, has been foreclosed or voluntarily assigned since 1920; in the 44 counties of South Dakota nearly 1 out of 3 farms, on an average, has been foreclosed since 1920; in the 4 Minnesota counties the proportion of farms sold at sheriffs' sales was approximately 1 out of 5 farms; but in the 3 Ohio counties the ratio of foreclosures was much lower—only 1 out of 17.

In connection with these comparisons it may be noted again that the Story County data include assignments as well as foreclosures, whereas the Brookings County data include only foreclosures instituted. In Minnesota the data relate to farms sold at sheriff's sales. In Ohio the data apply to all foreclosures in the three counties. These differences should be noted with respect to the comparisons outlined above.

Another significant characteristic of the forced-sale situation is the change in proportions of actual foreclosures as compared with voluntary assignments. In 1925 (*21*), for the three Ohio counties of Putnam, Greene, and Union, there were, in all, 24 foreclosures by financial institutions and 19 voluntary assignments; foreclosures thus constituted over half the total. Foreclosures continued more numerous than assignments until 1929, when there were 33 foreclosures and 35 assignments. In 1931, the number of foreclosures jumped again, reaching 69, as compared with 36 assignments.

In Story County, foreclosures and assignments maintained a reasonably stable relationship to each other in the earlier years of the depression (*9*), foreclosures usually numbering 2 or 3 to each voluntary assignment. In recent years the ratio appears to have changed. The year 1929, for example, saw 6 foreclosures and 5 assignments, 1930 saw 10 foreclosures and 26 assignments, and 1931 saw 30 of the former and 35 of the latter, indicating an increase in the relative frequency of the assignment in recent years.

Further evidence of the increasing frequency of the assignment, at least in some parts of Iowa, is found in a classification of forced sales in 13 townships of Iowa, covering the years 1928 to 1932 (*10*). In 1928 total forced sales for the 13 townships amounted to $431,474, of which $261,482 represented foreclosure, $74,992 represented cancelation by foreclosure of prior lien, and $95,000 represented assignment to mortgage holder. In 1929 the total of forced sales was $265,643, but the combined amount foreclosed and canceled by foreclosure of prior lien declined approximately one half, whereas assignments increased about one seventh. The following year saw a further decrease in foreclosures and a doubling of assignments, resulting in a considerable increase in the total forced sales. The following 2 years saw an increase in all items, the total forced sales in 1932 having amounted to $959,135, of which $77,094 was canceled by foreclosure of prior lien, $454,841 was foreclosure, and $427,200 was assignment. Thus in these 13 townships, assignments grew in fre-

quency, accounting in 1928 for 22 percent of total forced sales and in 1932 for 45 percent.

Still another interesting development from this Iowa study (*10*) consists of the changes in the last 15 years in the methods of payment of mortgage loans. In the 13 townships included in the study, the average amount of mortgage loans repaid from 1915 to 1920, inclusive, was slightly over $1,250,000, of which 52 percent was paid by renewal, 27 percent through sale of the property, 21 percent by miscellaneous methods, and an insignificant amount through foreclosure.

In the 1920's the total loans paid increased somewhat, in 1923 amounting to $2,500,000, but in recent years it has declined, and in 1931 amounted to only $1,500,000. The average for the period 1926–31 was about $1,800,000.

The amount of renewals also increased in the early 1920's, and decreased later, averaging 44 percent of all debt payments over 1926–31 and only 17.5 percent in the first 10½ months of 1932. Payments through sale were lower after 1920 than during the several years preceding, and fell off rapidly after 1925, averaging only 4 percent of all payments over the period 1926 to 1931. Some improvement occurred in 1932 in this item, judging by the period January 1 to October 15, for which data were reported.

The proportion of loans paid by means of foreclosure, however, increased rapidly. From only $800 in 1918, loans paid in this manner increased to $909,064 in 1926, then declined to $265,643 in 1929, and again climbed to $959,135 for the first 9½ months of 1932. The proportion of loans paid by foreclosure averaged 30 percent for the 6 years 1926–31, and was 67 percent for the first 9½ months of 1932. These figures illustrate literally the report from correspondents that renewals have been getting increasingly difficult to secure.

A further point developed by the Ohio study (*21*) involved the prices at which foreclosed farms were sold. From 1910–24, in the 3 counties studied, in only 3 years did the total amount for which foreclosed farms were sold fail to exceed the amount of the judgments against the property. Since then the situation has been reversed. In each later year for which data are available (to September 1932) the total realized by the sale of foreclosed property has been considerably less than the total judgments. In fact, for the 367 farms involving 40,809 acres, which were foreclosed during these 7¾ years (1925 through September 1932) the total amount for which these properties were sold lacked a little over a half million dollars of satisfying the judgments against them; that is, the amount for which the properties were sold was 22 percent less than the amount of the judgments. This statement, pertaining to aggregate sales, does not mean that some of the individual properties may not have sold for the amount of the judgment or more.

TAX SALES INCREASED, RELIEF LEGISLATION ENACTED IN SEVERAL STATES

Tax sales, as well as foreclosure sales, increased markedly during the year ended March 15, 1933. The average rate of tax sales for the country as a whole, according to the Bureau estimates (table 12)

increased to 15.3 farms per 1,000, from the 13.3 for the preceding year.

Great variation occurred from region to region, and from State to State. The lowest average rate for any geographic division was 5.6 farms per 1,000 for the East North Central States. Individual States in the group ranged from 2.2 farms per 1,000 for Ohio to 9.3 for Michigan. The next lowest average rate for any geographic division was 6.6 per 1,000 in New England. In several States of this area, however, averages were lower than in any of the East North Central group, but high rates in two States raised the group average.

Higher frequencies of tax sales occurred in the South Atlantic and East South Central States, where division averages were 27.3 and 27.1 farms per 1,000, respectively. The West South Central and Mountain States, with respective rates of 16 and 19.2, occupied intermediate positions.

The Federal Land Bank of Wichita (*3*) states (February 1933): "Fairly complete reports from Colorado, Kansas, and Oklahoma indicate the possibility that more than 40 percent of the farms in these states were either sold for delinquent taxes last fall, or are now subject to such sale."

Interpretation of the rates of tax sales is rendered more uncertain by reason of legislation in a considerable number of States affecting tax-collection laws in several ways.

In North Dakota [24], for example, the right of the county to take a tax title was suspended until March 1, 1935. In South Dakota the law was changed, easing the payment of taxes, and penalties were modified. In Kansas, a new law provided that tax land bid in by the county may be redeemed without penalty before 1934, and without interest before September 1933. These laws were enacted in the first quarter of 1933.

Kentucky extended the time for payment from March 1 to March 31, and West Virginia and South Carolina liberalized somewhat the regulations concerning payment of taxes.

These are suggestive of the manner [25] in which legislatures have attempted to ease the incidence of property taxes. Most such measures apparently are based upon the expectation that incomes will eventually become adequate to meet these charges, provided the penalties are not exorbitant. It is probable that in many cases the effects of such legislation will be more evident in the figures for next year than for the one just passed.

FREQUENCY OF VOLUNTARY SALES INCREASED SLIGHTLY

The rate of voluntary sales for the country as a whole (which each year since 1926, with one exception, has been lower than the preceding year) showed a slight upturn for the year ended March 15, 1933, when the average rate was 16.8 farms per 1,000, in contrast to the 16.2 the preceding year. Four of the geographic divisions likewise averaged higher than a year ago, the Middle Atlantic, South Atlantic, East South Central, and West South Central. Average rates in the others were lower than the preceding year.

[24] See reference in footnote 22, p. 48.
[25] A more complete list is contained in the reference cited in footnote 22, p. 48.

The highest average rates were in the New England, the Middle Atlantic, and the Pacific States, the respective averages being 22.5, 21.0, and 21.3 sales per 1,000 farms. The lowest average rate was 13.8, in the West North Central States.

Of the individual States, in 21 the average voluntary sale rate was higher than a year ago, in 25 it was lower, and in 2 there was no change. Of the increases, 1 each occurred in the New England and Middle Atlantic States, 3 in the West North Central, 6 in the South Atlantic, 8 in the South Central, and 2 in the Mountain States. Of the decreases, 5 occurred in New England, 5 in the East North Central, 4 in the West North Central, 2 in the South Atlantic, 6 in the Mountain, and 3 in the Pacific States.

Complete data concerning the sellers of such farms are not available. There has been a definite tendency in recent years, however, for owners who have not had to sell to hold their farms rather than sell under the extremely unfavorable market conditions. Furthermore, the lack of opportunity in cities has discouraged the normal farm-to-city movement. Various of the land banks, as reported in statements to the daily press and in the Sixteenth Annual Report of the Federal Farm Loan Board (*19, p. 14*) have increased their sales. In 1930 the number of farms [26] sold by the 12 banks was 2,736, in 1931 it was 3,441, and in 1932 it was 4,886, an increase of 42 percent from 1931 to 1932.

The joint-stock land banks [26], too, have increased their sales during the last year. In 1931 the joint-stock land banks not in receivership sold 1,504 farms, and in 1932 the same banks sold 3,388, an increase of 125 percent.

The number of units sold by these two groups combined has increased approximately 69 percent from 1931 to 1932. Exact data concerning the extent to which other holders of distress land have increased their sales are not available, although the tendency appears more or less general to "clear the decks" of the poorer farms, but to retain the better properties, and to maintain them in good physical condition in the anticipation of eventually selling them under more propitious conditions than have prevailed for the past few years. It would appear, therefore, that increases in the number of voluntary sales consist to a considerable extent of increases in the sales of previously foreclosed farms rather than in the reestablishment of a normal market.

It may be pointed out in connection with the sale of foreclosed farms that the 3,643 farms [27] sold in 1931 by the Federal land banks were carried on the books of the banks at an investment of $12,530,415. The total consideration received for their sale was $10,040,247, or 19.9 percent less than the investment. The 5,092 farms sold in 1932 were carried on the books at an investment of

[26] These are the totals of (1) "lands owned outright disposed of (whole units)", (2) "parts of farms disposed of", (3) "sheriffs' certificates, judgments, etc., sold or redeemed", (4) less "sales canceled", as reported in tables 28 and 29 of the sixteenth annual report and tables 30 and 31 of the fifteenth annual report of the Federal Farm Loan Board.

[27] These figures refer only to "lands owned outright disposed of (whole units)." See tables 28 and 29, sixteenth annual report (*19*). Parts of farms were sold in addition, and there were sheriffs' certificates, judgments, etc., which were sold or redeemed. There were also some cancelations, some of which may have been of the "lands owned outright disposed of (whole units)."

$17,277,757, and the consideration received in their sale was $12,468,240, or 27.8 percent less than the investment. Similarly, the consideration received by the joint-stock land banks for farms sold in 1931 was 27.2 percent less than the investment as carried on the books, and in 1932 it was 34.5 percent less.

Little is known concerning the circumstances involved in individual foreclosures, except for general statements of policy, such as that from the sixteenth annual report (*19, p. 13*) of the Federal Farm Loan Board.

> The Farm Loan Board is advised that it is not the policy of the banks to institute foreclosure proceedings except for the protection of the banks when borrowers have abandoned their farms or when, after careful investigation of the merits of individual cases, it is found that the borrowers are not making satisfactory efforts to meet their obligations or have no chance to succeed if given further time. In a large proportion of the cases in which foreclosure proceedings have been instituted the action was taken upon the recommendation of the local national farm loan associations, composed of farmer-borrowers, through which the loans were obtained and which endorsed and became liable for the loans.

It frequently happens that borrowers allow taxes to become delinquent. Under the circumstances of tax delinquency, the mortgage holder is faced with the necessity of taking some action to protect his interests, and if there is doubt concerning the mortgagee, foreclosure affords the normal method of securing a more adequate control of such income as may be produced by the farm. It has also been necessary in some cases for holders of first mortgages to protect their interests from holders of junior liens, or from unsecured creditors.

It is probable that the farms sold at such losses are for the most part the more undesirable farms, either naturally, or as a result of careless or inefficient management. In the case of such properties, immediate sale, even at a loss, may be the most economical way out.

In any event, the large differences between investment and consideration received, when viewed in retrospect, suggest that as a general consideration careful attention in the future might well be given to the advisability of compromising with the debtor in cases which, if forced into foreclosure, might involve even greater losses to both parties concerned. Recently enacted legislation [28] should facilitate adjustment in such cases. Drastic changes in the purchasing power of the dollar, measured in terms of what it will buy, as have been involved in the changing price level from 1929 to 1933, are beyond the control and hence the responsibility of individual debtors and creditors. When such changes occur the essential problem consists in the development of the most economical workable solution which shall give equitable consideration to the rights of both parties, as well as to the public interest.

The total number of transfers of ownership appears to have increased during the last 2 years (table 12), but the principal trends in the relative frequency of different types of transfers have continued (table 13). Voluntary sales, which, in 1927, 1928, and 1929, represented about two fifths of all transactions, have dropped to less than one fifth; and all forced sales, which, in the earlier period,

[28] See page 63 and reference (22).

represented only about one third of the transfers, have increased to over one half. Little change has occurred on the whole in the proportion of inheritance and gift transfers. A slight downward trend seems to exist in the proportion of administrators' and executors' sales.

TABLE 13.—*Changes in farm ownership: Relative frequency in percentage of total transfers, 1927–33*

Geographic division	Voluntary sales and trades								All forced sales							
	1927	1928	1929	1930	1931	1932	1933	Average 1927–33	1927	1928	1929	1930	1931	1932	1933	Average 1927–33
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	51.5	54.4	52.2	51.0	54.7	41.0	35.4	48.6	19.7	16.7	18.7	18.6	17.3	25.6	31.2	21.1
Middle Atlantic	54.6	52.6	49.8	48.8	44.1	36.9	30.0	45.3	17.4	18.4	21.2	22.6	26.9	33.5	40.6	25.4
East North Central	38.8	37.5	36.8	33.8	30.5	23.2	18.8	31.3	30.7	33.4	33.8	36.2	39.4	47.4	53.1	39.0
West North Central	33.7	32.9	34.6	33.7	28.3	16.9	12.9	27.6	44.2	44.6	46.0	49.4	48.9	62.7	67.2	49.5
South Atlantic	37.8	31.8	30.4	29.0	21.2	14.8	14.6	25.7	33.7	37.0	39.8	47.2	56.5	58.7	63.6	43.6
East South Central	42.7	42.7	43.6	42.3	31.0	19.7	17.7	34.2	31.6	31.1	28.3	36.8	41.4	58.0	59.6	39.8
West South Central	48.7	46.8	48.6	45.4	32.4	21.6	19.9	37.6	31.1	31.0	28.9	31.8	43.4	56.4	58.0	40.0
Mountain	36.8	40.8	46.7	47.4	34.1	23.3	19.7	33.5	49.5	46.1	43.3	46.0	50.0	67.0	61.8	48.5
Pacific	52.8	51.1	49.2	52.3	38.0	30.3	25.8	42.8	29.3	30.6	30.8	36.4	43.0	51.0	53.3	37.6
United States	41.3	39.8	40.5	38.6	30.7	21.1	17.9	32.8	34.0	34.5	33.6	33.8	42.2	54.4	57.8	41.5

Geographic division	Inheritance and gift								Administrators' and executors' sales							
	1927	1928	1929	1930	1931	1932	1933	Average 1927–33	1927	1928	1929	1930	1931	1932	1933	Average 1927–33
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	15.8	16.2	16.5	17.1	15.7	16.9	18.7	16.7	11.9	11.1	11.2	10.1	10.0	11.4	11.2	11.0
Middle Atlantic	13.0	13.4	14.2	14.1	16.3	16.3	16.0	14.6	12.8	12.8	12.7	12.1	12.6	11.0	11.3	12.2
East North Central	14.7	15.2	15.6	15.2	15.2	15.2	16.1	15.3	13.7	13.0	11.8	12.7	12.3	11.2	9.2	12.0
West North Central	11.2	11.5	13.3	14.4	14.5	11.7	12.0	12.7	9.0	8.9	9.5	9.1	8.1	5.8	5.7	8.0
South Atlantic	16.0	16.9	17.3	18.2	18.3	16.9	15.9	16.9	12.0	12.0	12.4	12.6	9.5	9.7	9.7	11.2
East South Central	13.6	14.3	16.4	16.4	15.8	12.8	12.9	14.6	10.9	10.2	10.0	10.3	8.9	7.1	7.0	9.3
West South Central	12.2	13.1	13.7	14.3	14.3	12.3	13.4	13.3	8.9	7.1	8.9	8.2	6.6	6.9	5.4	8.0
Mountain	6.4	6.6	7.9	8.6	9.5	10.3	11.1	8.6	4.8	4.3	5.4	5.7	4.9	6.0	4.8	5.1
Pacific	10.1	10.6	11.3	12.7	11.4	10.2	12.5	11.4	5.8	6.6	6.4	6.2	6.2	5.8	4.7	6.0
United States	12.9	13.5	14.7	15.1	15.2	13.5	14.0	14.1	10.2	10.2	9.3	9.9	9.2	8.1	7.5	9.2

Geographic division	Miscellaneous and unidentified							
	1927	1928	1929	1930	1931	1932	1933	Average 1927–33
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	1.1	1.6	1.4	2.2	2.8	3.1	3.8	2.6
Middle Atlantic	2.3	2.6	2.1	2.4	2.1	2.3	2.2	2.4
East North Central	2.1	1.9	2.3	2.1	2.5	2.0	2.8	2.4
West North Central	1.5	2.1	1.6	2.4	2.3	2.9	2.7	2.3
South Atlantic	1.4	1.7	1.6	2.2	2.5	2.1	2.1	2.0
East South Central	1.3	1.7	1.7	2.5	2.9	2.6	2.8	2.2
West South Central	1.1	2.0	1.6	2.6	2.3	2.6	2.3	2.4
Mountain	2.5	2.2	1.6	2.2	1.5	2.5	2.6	2.2
Pacific	2.0	2.1	2.6	2.4	1.4	2.7	2.7	2.3
United States	1.6	2.0	1.9	2.6	2.7	2.9	2.8	2.4

Certain regional characteristics with respect to relative frequencies have been retained. In the North Atlantic and Pacific States, voluntary sales have accounted for a larger share of transactions than in other sections, during the last year as well as previously. Forced sales have been somewhat less frequent, relatively, in the North Atlantic States than elsewhere.

FARMER BANKRUPTCIES WERE MORE NUMEROUS

The fiscal year ended June 30, 1932, is the first year since 1925 during which the total number of farmer bankruptcies has failed to decline. The peak of farmer bankruptcies was reached in 1925, when 7,872 cases were concluded in the courts. For the country as a whole, the number steadily declined to 4,023 for the year ended June 30, 1931. The next year, the last for which data are available, however, saw a 21 percent increase, bringing the total for the year ended June 30, 1932, to 4,849 (table 14).

TABLE 14.—*Farm bankruptcies: Cases concluded in fiscal years ended June 30, 1925–32*

Geographic division and State	Number								Percentage of all bankruptcy cases							
	1925	1926	1927	1928	1929	1930	1931	1932	1925	1926	1927	1928	1929	1930	1931	1932
United States	7,872	7,099	6,360	5,794	4,944	4,023	4,849		7.8	7.5	7.1	6.7	6.1	6.1	7.7	
New England	189	145	108	162	145	141	164	186	5.2	4.6	3.1	3.5	3.2	2.8	2.3	3.8
Middle Atlantic	193	224	234	274	270	305	353	372	2.6	3.4	3.1	3.5	3.2	3.6	3.6	3.8
East North Central	760	844	719	874	980	973	1,035	1,580	13.4	11.2	9.2	9.3	8.8	8.0	8.1	10.7
West North Central	2,899	2,813	2,404	1,729	1,471	1,267	1,010	1,009	39.2	38.4	36.3	34.2	31.2	31.2	27.9	20.8
South Atlantic [1]	1,037	747	565	605	515	491	484	487	17.6	12.7	10.0	9.9	7.9	8.9	8.8	8.7
East South Central	517	579	615	521	382	338	338	311	9.7	9.5	9.7	6.9	4.5	3.8	3.6	3.2
West South Central	630	704	567	581	464	375	392	309	23.6	25.6	20.7	19.5	17.3	14.7	10.8	10.2
Mountain	1,671	1,142	909	420	235	203	201	215	41.6	42.7	31.8	24.0	20.9	17.1	13.3	15.2
Pacific	880	511	449	458	387	326	256	311	14.6	11.9	10.6	8.5	6.7	4.8	4.4	5.0
New England:																
Maine	103	101	51	77	60	66	62	80	11.8	11.9	6.3	9.2	8.3	7.9	7.1	10.1
New Hampshire	8	7	7	7	6	5	1	9	5.8	5.8	5.7	6.4	4.4	4.3	1.2	6.9
Vermont	30	17	21	29	28	32	21	32	12.0	8.6	10.8	14.9	13.3	14.6	10.0	17.6
Massachusetts	7	13	10	18	25	22	15	23	.8	.8	.6	.7	1.0	.8	.6	1.2
Rhode Island	2	0	2	0	2	0	1	1	1.6	0	1.6	0	1.1	0	.8	.4
Connecticut	13	8	14	31	14	16	4	12	2.2	1.7	2.6	3.7	2.1	2.2	.7	1.6
Middle Atlantic:																
New York	104	122	145	152	149	172	198	193	1.9	2.8	2.6	2.7	2.7	3.2	3.1	3.1
New Jersey	16	23	16	12	18	12	18	21	2.2	4.1	1.9	2.1	1.7	1.2	1.4	1.8
Pennsylvania	73	80	63	110	103	121	137	158	5.6	5.8	4.6	6.3	5.5	5.8	5.4	6.9
East North Central:																
Ohio	214	199	137	157	231	270	277	460	11.8	8.7	5.7	5.6	6.4	5.7	5.6	8.9
Indiana	97	112	78	114	139	144	149	208	9.3	9.3	5.8	4.3	9.5	9.7	9.5	10.3
Illinois	190	234	257	276	419	364	369	614	11.9	9.0	8.7	11.9	10.9	9.1	11.5	13.2
Michigan	46	60	34	41	30	29	31	47	3.3	3.4	4.3	3.4	2.2	2.6	1.9	2.1
Wisconsin	213	239	213	186	204	166	209	251	20.2	19.0	16.8	14.9	13.0	7.9	11.6	15.2
West North Central:																
Minnesota	399	419	394	299	193	159	116	114	28.3	30.2	41.6	32.2	9.6	10.2	7.4	9.9
Iowa	661	701	656	534	430	325	326	426	30.4	43.4	34.1	24.1	22.7	9.3	6.7	24.5
Missouri	397	361	314	265	231	214	181	229	19.4	19.7	17.9	16.4	14.1	9.1	11.3	13.7
North Dakota	430	396	276	135	267	196	108	55	76.1	79.8	59.6	39.9	79.1	59.8	47.1	29.9
South Dakota	313	309	223	259	166	114	93	93	63.3	59.0	47.8	29.0	64.2	44.3	36.8	34.3
Nebraska	178	286	181	185	157	149	197	97	38.3	39.6	29.6	23.3	23.0	21.7	28.3	18.9
Kansas	313	190	231	114	97	109	79	96	21.8	23.4	17.2	9.4	8.4	9.5	11.4	12.8
South Atlantic:																
Delaware	6	5	4	10	5	7	15	19	20.0	9.1	6.3	13.2	6.5	9.3	4.2	4.4
Maryland	35	34	35	49	49	49	42	31	21.7	17.7	13.1	17.5	13.2	9.3	13.4	8.1
Virginia	96	111	97	102	98	120	102	117	6.8	6.6	5.2	5.5	4.6	4.1	4.6	4.6
West Virginia	19	18	15	25	41	30	30	26	4.6	2.1	2.4	3.1	4.2	1.6	3.2	2.4
North Carolina	42	37	30	28	28	29	34	47	14.6	11.4	9.3	9.0	7.9	7.4	9.6	7.6
South Carolina	26	52	47	45	34	26	22	29	11.2	19.2	16.8	15.5	9.4	7.0	9.2	13.5
Georgia	799	467	337	304	249	216	177	142	28.3	21.3	7.8	6.9	6.6	7.1	8.8	6.1
Florida	9	16	9	13	13	11	11	26	4.2	6.6	3.9	5.2	5.1	4.9	4.9	4.9

[1] Includes the District of Columbia. For the whole period only 1 farm bankruptcy in the District of Columbia has been reported, that 1 being for the year ending June 30, 1926.

TABLE 14.—*Farm bankruptcies: Cases concluded in fiscal years ended June 30, 1925–32*

Geographic division and State	Number								Percentage of all bankruptcy cases							
	1925	1926	1927	1928	1929	1930	1931	1932	1925	1926	1927	1928	1929	1930	1931	1932
East South Central:																
Kentucky	109	117	164	191	131	122	99	103	15.8	11.4	13.6	10.9	7.0	6.4	5.4	6.2
Tennessee	109	134	101	102	118	82	101	89	5.9	6.5	4.7	4.3	4.6	2.7	3.1	2.7
Alabama	242	266	318	211	88	117	126	94	10.8	11.0	12.2	8.6	3.2	3.6	3.0	2.3
Mississippi	58	33	32	17	19	14	13	25	10.7	8.9	7.6	2.1	4.9	2.6	2.8	3.9
West South Central:																
Arkansas	85	101	94	89	83	94	37	53	25.1	22.5	22.6	23.5	17.7	20.4	11.5	12.7
Louisiana	77	159	119	93	85	85	74	52	21.2	28.6	25.3	19.3	18.6	15.6	10.6	10.0
Oklahoma	145	170	145	106	66	55	34	64	15.7	20.1	18.5	13.2	8.8	7.4	4.6	6.4
Texas	343	334	209	271	251	141	137	139	30.4	27.5	19.5	22.8	23.9	17.6	14.7	12.6
Mountain:																
Montana	460	634	245	126	131	104	66	59	65.4	59.2	45.7	36.4	34.6	31.0	21.3	21.1
Idaho	260	222	161	101	76	39	41	45	55.6	51.5	47.8	35.6	30.6	24.2	23.0	25.8
Wyoming	45	38	31	44	17	12	3	18	33.6	22.5	27.2	29.7	25.0	21.1	8.2	16.3
Colorado	220	143	90	63	50	49	53	58	32.1	29.9	22.5	16.3	11.7	11.3	11.6	13.7
New Mexico	27	50	22	27	26	6	7	4	28.4	36.5	32.8	27.6	31.0	8.2	12.7	7.1
Arizona	19	29	30	23	7	6	7	9	30.6	34.5	26.3	20.7	11.1	10.2	9.9	12.0
Utah	32	33	26	34	24	36	22	21	8.4	9.2	8.0	8.9	8.4	10.6	8.9	8.1
Nevada	5	2	4	2	1	8	2	1	20.8	15.4	18.2	11.1	4.2	12.1	3.8	3.0
Pacific:																
Washington	199	182	160	144	107	90	100	92	23.8	19.1	14.6	12.6	7.4	5.1	6.7	7.8
Oregon	100	109	72	67	83	50	42	63	10.8	10.0	6.9	5.5	6.5	2.9	3.5	5.1
California	293	220	236	242	197	195	113	185	12.8	9.5	8.9	8.2	5.4	5.1	3.4	4.2

Division of Agricultural Finance, compiled from annual reports of the Attorney General.

The upward tendency was quite general, all but one of the geographic divisions—the East South Central—having reported more than for the year before. Increases were reported in 31 States, decreases in 16, and 1 State—Rhode Island—reported only one farmer bankruptcy, the same as the previous year.

The number of bankruptcies last year was equivalent to 1 bankruptcy for every 1,297 farmers, as compared with 1 bankruptcy for every 1,563 farmers for the year before, and for every 809 farmers in 1925. Inasmuch as these figures relate to bankruptcies concluded in the courts for the fiscal year ended June 30, 1932, they probably reflect to a considerable extent the reduced incomes of the 1930 or 1931 crop year rather than later years. It will be recalled that income from farm production in 1931 was about 27 percent less than that of 1930 and that income for 1932 was about 26 percent less than in 1931.

The greatest number of farmer bankruptcies occurred in the East North Central States, where 1,580, as compared with 1,025 for the previous year, were reported. In the West North Central States there were 1,099, which was only 89 more than in the preceding year. Of the individual States, Illinois reported the greatest number, 614, with Ohio and Iowa following with 460 and 465, respectively. Rhode Island and Nevada each reported only 1.

Farmer bankruptcies accounted for 7.7 percent of all bankruptcies. This compares with 6.7 percent the previous year, which was the lowest of the continually decreasing series since 1924, when 18.7 percent of all bankrupts were farmers. In the West North Central States, 20.5 percent of all bankrupts of the year were farmers, South Dakota and Iowa leading the list with 45.3 and 45.0 percent, respectively. The proportion of all bankrupts who were farmers increased in 33 States, decreased in 14, and remained constant in 1.

LARGER SHARE OF VOLUNTARY SALES TO NONFARMERS AND NONLOCAL RESIDENTS

Of the farms involved in voluntary sales and trades consummated during the year, the greater numbers were bought by local buyers (table 15). Seventy-six percent of the buyers at bona-fide sales reported by dealer correspondents lived in the same county or the county adjoining that in which the farm was located. The proportion of purchases by local buyers has been declining consistently during 4 of the 6 years of the available record, having changed in all from 84 percent in 1928 and 1929 to 76 percent in 1933. This trend appears to be associated with the city-to-farm migration on the part of unemployed.

TABLE 15.—*Voluntary sales and trades of farm real estate: Percentages of purchases reported in specified classes of residence, occupation, and purpose of purchase, for the United States and for geographic divisions, 12 months ended March 15, 1928–33*

Geographic division	Local residence						Purchase for operation					
	1928	1929	1930	1931	1932	1933	1928	1929	1930	1931	1932	1933
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	61	57	59	46	51	50	82	85	90	70	85	85
Middle Atlantic	75	77	70	70	69	66	83	85	83	83	83	83
East North Central	85	86	83	84	78	76	83	83	80	82	77	75
West North Central	86	86	80	88	85	81	85	84	85	81	76	74
South Atlantic	80	82	82	82	79	76	81	81	78	80	78	78
East South Central	87	87	90	85	87	86	86	82	79	79	81	80
West South Central	81	80	83	77	73	76	76	76	73	70	68	68
Mountain	81	80	81	77	76	77	91	91	87	86	87	88
Pacific	73	72	71	72	66	70	87	91	84	90	86	88
United States	84	84	82	81	77	76	84	83	81	81	79	77

Geographic division	Occupation of purchaser																	
	Active farmer						Retired farmer						Other occupation					
	1928	1929	1930	1931	1932	1933	1928	1929	1930	1931	1932	1933	1928	1929	1930	1931	1932	1933
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	64	62	59	42	37	40	3	2	3	6	7	7	33	36	38	52	56	53
Middle Atlantic	62	67	58	50	45	43	5	4	4	7	5	5	33	29	41	43	50	53
East North Central	74	73	67	60	55	48	5	6	6	7	7	7	21	21	27	33	38	45
West North Central	83	82	81	75	67	59	6	5	5	8	8	9	11	13	14	17	25	33
South Atlantic	75	74	66	62	55	54	2	3	3	5	4	4	23	23	30	33	41	42
East South Central	78	78	74	69	65	66	3	2	2	3	4	3	19	20	23	28	31	31
West South Central	78	75	70	64	58	49	6	3	4	6	5	6	20	22	26	30	43	46
Mountain	91	91	85	78	67	68	1	1	2	4	5	2	8	8	15	20	28	30
Pacific	76	82	71	65	51	52	4	2	4	4	6	6	20	16	26	31	43	42
United States	77	78	73	68	57	53	5	4	4	6	6	6	18	18	24	29	37	41

The lowest proportion of local buyers, 50 percent, is reported in New England. In all other geographic divisions, two thirds or more of the buyers were local, indicating the preponderant, even though declining, importance of the local buyer.

Under normal conditions the majority of farm sales are made to persons who, prior to buying, have been closely associated with farming. Young men aspiring to ownership, farmers expanding their farms or investing surplus funds, and others who, for various rea-

sons, shift from one farm to another in attempting to better their condition, provide the principal demand for farms under normal circumstances. Indicative of this situation are the data of table 15. In 1928 and 1929 three fourths or more of the purchasers at voluntary sales were active farmers. In more recent years this class of buyers has become relatively less important, although in most regions, even for the year ended March 15, 1933, a larger share of the farms sold voluntarily were sold to active farmers than to any other one group. Declining farm incomes on the one hand and the increasing shift from city to farm as a result of industrial inactivity are largely responsible for the increasing share of purchases by persons from nonfarming occupations. In the industrial States of the Northeast, buyers from nonfarming occupations have predominated, having bought a considerably larger share of the farms than in the less-industrialized sections.

The predominant purpose in buying farms appears to be to engage in farming rather than to speculate or to rent to other persons. This tendency appears most pronounced in the Northeast and far West. In the former section it is not clear to what extent the expectation is to farm permanently and to what extent it is a temporary arrangement, or an attempt to provide a supplemental income through part-time farming. Similarly in the Central States it is not clear how far the decreasing proportion of buyers who plan to operate their farms indicates a tendency for investors or speculators to take advantage of what they believe to be bargains.

Complete information is not available as to the principal class of buyers at forced sales. Such evidence as is available indicates that in a majority of cases the property continues to be bid in by the mortgage holder.

One indication is provided by the experience of the Federal land banks. Out of 3,350 [29] (*8*, *19*) foreclosures completed in 1929 the Federal land banks bought in 3,072 [30] or 91.7 percent. Out of 4,637 [29] foreclosures completed in 1930, the banks bought in 4,483 [30], or 97.6 percent, and in the first 11 months of 1931, out of 6,826 [29] foreclosures completed, 6,558 [30] or 96.1 percent were bought in. In the case of the joint-stock land banks, the proportion of completed foreclosures bought in was practically the same as in the case of the Federal land banks.

FARM-MORTGAGE CREDIT CONDITIONS [31]

Farm-credit conditions during the year under consideration have been characterized by continued difficulties in repayment of credits previously obtained and by the smallest volume of new credit extended in many years. Low farm incomes in many cases have prevented payment of current interest and maturing payments on principal necessary to maintain loans in good standing. Loans with expiring terms have encountered pressure for reduction as a condition of renewal, in order to bring outstanding obligations within manageable limits for borrowers and within the requirements of law

[29] Includes farms deeded directly to the banks by borrowers.
[30] Includes farms bought by banks subject to redemption by the borrowers and farms deeded directly to the banks by borrowers.
[31] Prepared by the Division of Agricultural Finance.

and safety for creditors. In pursuit of this policy, lending agencies generally have included in new and renewed loan contracts, provision for payments on principal during the life of the loan.

Despite these efforts, it has not been possible to reduce debts as rapidly as farm values have declined, and the lag in debt adjustment incident to the shrinkage of more than one third in farm values during the 3 years 1930–33 has increased the number and proportion of mortgaged farms having high ratios of debt in relation to the new values. A widespread tendency among creditors toward postponement of payments and of leniency toward borrowers has not prevented an increased number of cases of forced liquidation following the rise in delinquency and the disappearance of equities, as evidenced by foreclosure, forced sale of property, or voluntary surrender of title.

New advances of funds on farm real estate security continued to decline throughout 1932 and the first half of 1933. The investments of 25 leading life insurance companies averaged approximately $600,000 per week during the first 8 months of 1933 as compared with an average of $900,000 in 1932, $2,000,000 during 1931, and $3,000,000 during the years 1928–30. New loans constituted less than 10 percent of the total loan contracts written by mortgage bankers during 1932.

The net result of small advances of new credit on the extinguishment of debt by taking over the security and through payment has been a continued reduction in the volume of outstanding farm loans of all lending agencies. Mortgages held by life insurance companies decreased more rapidly during the first 7 months of 1933 than during any 7 months of 1932, the decline during 1932 having exceeded the total reduction during the 4 previous years, 1928–31. At the same time, resale of acquired properties has represented only a fraction of the number of farms taken over on account of debt, with the result that credit arising from purchase money mortgages has been much less than that extinguished by acquiring land. A further result of this situation has been the continued net outward flow of capital from agriculture, with no reversal of this fundamental trend as yet evident.

In the field of short-term farm credit, the year was featured by banking difficulties and the use of emergency credit in larger proportions than in any previous year. The closing of many rural banks during the concluding period of 1932 and the early months of 1933 was followed by the bank holiday of March, which left more than 3,000 banks, mostly in the rural districts, closed or operating under restrictions. These difficulties stimulated the creation and expanded activity of Government-sponsored credit agencies. Outstanding advances of the regional agricultural credit corporations, intermediate credit banks, and crop-production loan offices amounted to $375,000,000 in August 1933.

The adverse trend of credit in agriculture during the past year has occurred despite generally favorable rates prevailing in central money markets with the exception of the early months of 1933 incident to the banking holiday. Very low rates have prevailed generally on short-term liquid credits, and yields on long-term bonds have declined slowly. Commercial-paper rates averaged 1.92 per-

cent for the first 8 months of 1933 as compared with 2.73 percent for 1932. Discount rates of Federal reserve banks have continued at extremely low levels, the New York rate having been 2½ percent during the summer of 1933. Average yields of United States Treasury issues have steadily declined from 4.27 percent in January 1932, to 3.38 percent in July 1933, averaging 3.46 percent for the first 8 months of 1933 as compared with 3.74 percent for 1932. Yields on Federal land bank bonds approached 6 percent in April 1933, but declined to 5 percent in August, averaging 5.41 percent for the first 8 months of 1933 as compared with 5.59 percent for 1932.

Federal land bank rates to borrowers averaged 5.58 percent for the 12 banks during most of 1932 and 1933. Contract rates on new loans by all banks were reduced to 5 percent in July 1933, though by provision of the Emergency Farm Mortgage Act the rates payable by farmers on outstanding loans made through the national farm loan associations and on new association loans made during the 2 years following May 12 are reduced to 4½ percent for the 5-year period begining July 11, 1933.

The year witnessed the enactment of a number of measures aimed at relieving debt distress and improving credit facilities. Acts of various State legislatures directed toward securing a stay of foreclosures for farmers temporarily unable to meet their obligations have restricted the number of formal court actions instituted to take possession of property. In several States voluntary local committees were formed to assist distressed borrowers in reaching such agreement with creditors as seemed calculated to assure mutual protection and fair treatment of all interests. An amendment to the National Bankruptcy Act approved March 3, provided for the appointment of debt conciliation commissioners by the Federal district courts, upon petition of 15 farmers from a given county. After prescribed hearings the court may approve any composition or extension of agricultural indebtedness agreed to by creditors representing a majority in number and amount. Legal proceedings against property may not be taken while cases are under consideration or during the life of the agreement. Secured creditors including lenders on real estate are not disturbed in their claims save with respect to the time and method of collection. The new law has been used extensively in adjusting debt difficulties in some areas, its facilities having been used by several hundred Utah farmers, for example.

The Federal Government enacted comprehensive measures relating to both long- and short-term credit. The Emergency Farm Mortgage Act in addition to reducing interest rates temporarily on loans by the Federal land banks waived all payments on principal for the 5 years following July 11, 1933, and authorized direct loans to farmers where national farm-loan associations do not provide accommodation. Authorization was given for the issuance of $2,000,000,000 of 4-percent bonds guaranteed as to interest by the Federal Government, such bonds to be offered in exchange for mortgages or sold to obtain proceeds for making new loans. Provision for second-mortgage loans not exceeding $5,000 each and bearing 5 percent interest was authorized from a fund of $200,000,000 made available by the Reconstruction Finance Corporation for cases of debt settle-

ment in which the total obligations of the borrower do not exceed 75 percent of the value of the farm property.

The Farm Credit Act of 1933 authorized the creation of regional credit corporations to be established in each of the 12 Federal land bank districts to assist in organizing and financing of local production-credit associations. Twelve banks for cooperatives are to be similarly established for the purpose of financing farmers' cooperative associations in the respective districts, while a central bank for cooperatives is to function in Washington for cooperatives operating on a national scale.

FARM REAL ESTATE TAXES[*]

Farm real estate taxes per acre reached their highest point for the country as a whole in 1929. For that year, according to revised data recently analyzed by the Department of Agriculture, the average tax per acre stood at 241 percent of the 1913 figure. Corresponding figures for 1930, 1931, and 1932 were 238, 218, and 189 percent. Thus a slight decrease from 1929 to 1930 was followed by a larger decrease in each of the later years. The 1931–32 change was 13 percent, and the total 1929–32 change was 22 percent.

In a great majority of cases these taxes are levied during the year named and are payable at about the end of that year or early in the next. They should be compared with land values for March 1 of the following year. The 22-percent decline in taxes from 1929 to 1932 compares with a 36.5-percent decline in land values. By 1932 severe distress was forcing substantial tax decreases. Yet average taxes payable near the end of 1932 had decreased from those of a year earlier by 13 percent, as compared with an 18-percent decrease in land values.

These tax changes both from 1929 to 1932 and from 1931 to 1932 were very unevenly distributed. In 2 States the tax per acre actually averaged higher in 1932 than in 1929, and in 2 States it stood at the same figure for the 2 years. Both increases were in New England. The greatest percentage decreases for the 3-year period were about 35 percent, in Florida and Indiana. Indexes of tax per acre in 1929, 1931, and 1932 and the changes between 1931 and 1932 are given by geographical divisions in table 16.

[*] Prepared by the Division of Agricultural Finance.

TABLE 16.—*Farm real estate taxes: Index of tax per acre and tax per hundred dollars of value, 1929, 1931, and 1932*

Geographic division	Index of tax per acre, 1913–100				Tax per $100 of value			
	1929	1931	1932	Change in the index 1931–32	1929	1931	1932	Change 1931–32
	Percent	*Percent*	*Percent*	*Points*	*Dollars*	*Dollars*	*Dollars*	*Dollars*
New England	249	253	242	−11	1.53	1.70	1.78	+0.08
Middle Atlantic	246	248	234	−14	1.51	1.69	1.84	+.15
East North Central	244	211	172	−39	1.51	1.73	1.67	−.06
West North Central	254	230	196	−34	1.08	1.31	1.36	+.05
South Atlantic	350	309	280	−29	1.07	1.25	1.36	+.11
East South Central	316	299	269	−30	1.22	1.51	1.66	+.15
West South Central	256	239	199	−40	.93	1.19	1.21	+.02
Mountain	203	184	173	−11	1.26	1.44	1.65	+.21
Pacific	259	235	208	−27	1.06	1.16	1.26	+.10
United States	241	218	189	−29	1.19	1.42	1.50	+.08

Taxes per acre indicate the actual amounts of taxes that farmers have had to pay on their real estate, and the actual amounts, therefore, have exerted immediate influence upon farm real estate values. In a more fundamental though less direct way the effect of taxes upon value depends upon the "burden" of the taxes. The latter relates the tax paid to the "true value" or "full value" of the property taxed. For any given year the burdensomeness is somewhat more closely related to income, but insofar as value is a proper capitalization of income, the ratio of taxes to value is an appropriate measure of burden, and changes in the ratio should indicate the changes in this burden. Table 16 shows, by geographic divisions, farm real estate taxes per hundred dollars of value in 1929, 1931, and 1932 and changes between 1931 and 1932.

Unlike tax per acre, tax per hundred dollars of value has continued to increase. While tax per acre decreased 22 percent from 1929 to 1932, tax per hundred dollars increased 26 percent. Between 1931 and 1932 tax per acre decreased 13 percent, and tax per hundred dollars increased more than 5 percent.

In one sense this increase in tax per hundred dollars is due to the failure of assessments to decrease as much as did land values. In many farming communities, on the other hand, further decrease in assessments would have brought only higher rates and no great change in tax levies. The difficulty lay deeper than assessments. Until total revenues required from the property tax could be reduced, a uniform decrease in assessments would fail to give relief. Relief in this sense has recently been attained to a significant degree, but not sufficiently to equal the decreases in farm income and farmland values. The continued increase in tax per hundred dollars means that, owing to the decrease in land values for other reasons, taxes have become an increasingly depressing influence upon these values.

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In The

District Court of the United States

NORTHERN DISTRICT OF INDIANA

Hammond Division

IN RE EDWARD CYR,
Debtor

Cause No. 2167

ORAL ARGUMENT FOR THE DEBTOR ON THE VALIDITY OF THE FRAZIER-LEMKE AMENDMENT

MAY IT PLEASE THE COURT:

It would be difficult to conceive of a matter more important to the agricultural community than this which is now before the court. This case involves the ability of a substantial percentage of the farmers to maintain a roof over their heads, and to have an opportunity to perhaps acquire in the future, something more than a mere subsistence. It is the only obstacle that remains between them and peonage. This is no exaggeration, because it can hardly be gainsaid that a farmer who has acquired, lived on, and operated his own property for a number of years, and who has a large family, as most farmers have, if compelled to abandon his home soil where he and perhaps his family for generations have taken root, and work out as a hired hand for

$20.00 a month (the current wage), is in a worse position even than a peon. Usually the latter has neither financial responsibilities, nor a sense of responsibility. And hence no worry nor ambition.*

The right to acquire and keep a home, and bear the responsibilities therewith connected, is the principal distinguishing characteristic between a freeman and the so-called peasant—an unknown class in this country. From the earliest date of recorded history, through the conquest by the Romans, to the present, the badge of a freeman has been the right to hold real estate. Deprive any substantial portion of the population of this country, of this opportunity, and you undermine its very foundation. It is because there is a distinct menace of this, that the Congress has exercised its power under section 8 of the Constitution, and passed the Frazier-Lemke Amendment to section 75, of the Bankruptcy Act, which gives to the farmer the right, with the consent of his creditors, to purchase his farm, or if he cannot obtain the creditors' consent, then allows him to retain the possession of his farm for five years at a reasonable rental, with an option to purchase.

THE FRAZIER-LEMKE AMENDMENT

Although it is true that at least one court has remarked upon the "crudity" of the Amendment, yet I very earnestly deny that such is the case. To me it is classic in its simplicity, with the exception of three words in one paragraph. And it is certainly direct in

* A prominent tourist returning from South America, relates the following incident. He saw a gentleman of brown hued skin, reclining in the shade of a banana tree, and asked him if he would take his parcels to his hotel. Upon being courteously refused the free-born American said to his South American brother, "If you will carry these packages to the hotel, I will gladly give you a dollar." "But Senor," the putative porter replied, "I already have a dollar."

its effect. The trouble with those who criticize it, is, either that they are not students of bankruptcy law and procedure, or that they do not take the trouble to properly familiarize themselves with it.

It must be remembered that the Frazier-Lemke Amendment is merely sub-section (s) of section 75 of the National Bankruptcy Act, and that it is governed in all cases where the procedure is not specifically defined, by the practice in bankruptcy as defined by the Act itself, and the General Orders of the Supreme Court. General Order L in fact, specifically points this out.

The Frazier-Lemke Amendment is very simple. As stated, it is merely an amendment to section 75, but for the purpose of the argument here, it can be considered as distinct, in and of itself, because it is entirely distinct from sections (a) to (r). These sections provide for a new form of procedure, known as conciliation proceedings, but I am informed that there has been no case in this district in which a "conciliation" has been effected. Counsel herein have a large number of cases, and has never been able to effect a composition or extension. As shown heretofore, some Frazier-Lemke petitions have been filed in this court by him, because differences of only $30.00 or $40.00 have existed in compositions affecting as much as $13,000.00. It might be said that it must have been bad business for the debtor not to have stretched the additional small amount. But the answer is, how far can you stretch a broken string?

I trust the court will excuse me if I refer to the provisions of this section rather colloquially. It provides:

(s) That any farmer who fails to make the lion and the lamb lie down together, or who feels aggrieved by his failure to do so, may amend his petition and ask to be adjudged a bankrupt.

At the time of the first hearing, he petitions that all of his property, whether pledged, encumbered, or unencumbered by liens "or otherwise" be appraised, his exemptions set out to him, and that he be "allowed to retain possession of any part of parcel, or all of the remainder of his property" and pay for the same under the terms and conditions set forth in this Amendment.

(1). Upon his request at the time of the first hearing, appraisers are appointed. His property is to be appraised at "its then fair and reasonable value, not necessarily the market value at the time of such appraisal." The appraisal is to be made "in all other respects" with right of "objections, exceptions, and appeal" in accordance with the Bankruptcy Act. Except that in case of real estate the objections, exceptions, and appeals may be made within one year from the date of the order approving the appraisal.

(2). After the value of the property has been fixed by the appraisal, the debtor's exemptions are set aside to him, subject to any liens upon the same, and the court may then "order that the possession, under the control of the court, of any part or parcel or all of the remainder of the debtor's property, shall remain in the debtor subject to a general lien, as security for the payment of the value thereof." And it is provided that such a lien is to be subject to and inferior to all prior liens, pledges, or encumbrances, and that such prior liens shall remain in effect upon the actual value of the property, as fixed by the appraisal. The liens on livestock are to cover all increase and the liens on real estate to cover all rental or crops as security for the payment of "any sum that may be due or past due under the terms and provisions of the next para-

graph", until the full value of any such particular property has been paid.

(3). It is then provided that upon request of the debtor "with the consent of the lien holder or lien holders," the trustee, after the order is made setting aside his exemptions, shall agree to sell to the debtor any part of the remainder of the bankrupt estate at the appraised value upon the following terms and conditions and "such other conditions" as in the judgment of the trustee shall be fair and equitable, namely: Payment of 1 percent on the unpaid balance for 6 years; 2½ percent on the principal the second and third years; 5 percent on the principal the fourth and fifth years, and the balance of 85 percent the sixth year; the proceeds to be paid to the lien holders as their interests may appear, and to the trustee of the unsecured creditors, as their interests may appear.

(4). "An agreement having been reached," the debtor may consume or dispose of any part of his property, subject to the general lien, and provided he pays the appraised value of the same.

(5). In case the debtor fails to make any payments, to the secured creditors or to the trustee, then such secured creditors or the trustee may proceed to enforce their lien.

(6). Having complied with the provisions of subsection (3), the debtor may apply for his discharge.

(7). This subsection provides: "If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as herein provided for, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first pay-

ment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided,* That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor, and he may apply for his discharge as provided for by this Act: *Provided, however,* That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.

If the debtor fails to comply with the provisions of this subsection the court may order the trustee to sell the property as provided in this Act."

SUMMARY OF THE LAW

There are only two sections of the Amendment that do not provide for a procedure without the consent of the creditors. First, subsection (s) provides that if the farmer feels aggrieved, because he can not weld the pewter handle to the wooden spoon, or mix oil and water, or make the tiger and his prey lie down together in peaceful comity, that he may file a petition asking to be adjudged a bankrupt, and that he be allowed to retain possession of his property.

Subsections (1) (2) (3) (4) and (5) are all steps taken with the consent of the creditors. There can be no constit[illegible]nal question involved here because the lien holders can make the farmer a present of all his obliga-

tions if they wish to. Subsection (6) is on the same order, because it provides that if he has complied with subsection (3), he may apply for his discharge. The only other procedure that is not taken with the consent of the creditors is the lease with the option of purchase, which he secures by subsection (7). This provides that he may retain possession of his property at a "reasonable rental" for five years. If during that period he manages through some agricultural alchemy to pay into court the appraised value of the property, he may secure his discharge. The proceedings are under the control of the court and any lien holder has a right to secure a reappraisal, and the debtor must then pay such reappraisal "if acceptable to the lien holder." It might be noted that subsection (7) provides specifically that the provision only applies to debts existing at the time the Act becomes effective, which is June 28th, 1934.

DIFFERENCES BETWEEN THE FRAZIER-LEMKE SALES AND SALES UNDER THE ORIGINAL BANKRUPTCY ACT

There is a marked difference between sales which may be made under the Frazier-Lemke Act and those which take place under the provisions of the other bankruptcy sections, and they are all to the disadvantage of the farmer, and are as follows:

(a): *The appraisal. In each case appraisals are made, but under section 70 (b) of the Bankruptcy Act, the appraised value as fixed by the court stands, and the sale is made on that basis. Under subsection (s), that is the minimum price the farmer pays. At some future time there may be a reappraisal and he may pay a higher price. If the reappraisal is lower, the lien holder has a right to make him*

pay the original appraisal. Also, under section 70 (b) of the Bankruptcy Act, the law itself recognizes that a sale at 75 percent of the appraised value is a mighty good sale, because the trustee can sell at that figure without first obtaining leave of court. As this court will take judicial notice of, there is any number of instances where sales are actually made for considerably less than 75 percent of the appraised value.

(b). *Under section 70 (b) of the Bankruptcy Act sales are made either at auction or by private sale, but in any event the trustee can solicit bids from the world in general. Under subsection (s) of section 75 the farmer can be the only purchaser if he so elects, and is able to make good. Since he pays the appraised value, there can be no possible criticism of a sale being made in this way. But the real objection is, that formerly under the Bankruptcy Act, the mortgage holder has the right to bid in the property under his lien, provided the court permitted him to do so. The court under the original Bankruptcy Act could always sell the property free and clear of liens if it so wished. But the lienholder could bid for the property and direct the bid to be applied on his lien, and therefore, since in many cases the lien was larger than a purchaser would pay at a bankrupt sale due to the fact that the lien holder had tacked on compounded interest and excessive attorney's fees, which he had not paid, he was in a position to either get the property or force a purchaser to pay him an excessive cash profit.*

AN ILLUSTRATION OF SUCH ATTORNEY'S FEES

As an illustration, let me refer the court to the case of Simon Shannon, Cause No. 2172, pending in this court. The foreclosure in that case was filed at Rensselaer by an attorney from Crawfordsville, whom it

is common knowledge, works on a monthly salary. He hired a local attorney at Rensselaer to put his name on the complaint. A decree was entered by default and a judgment and sale had by default. Waiving aside compounded 8 percent interest, which amounted to a large sum, there was taxed up $1,460.00 attorney's fee. It is common knowledge that the attorney at Rensselaer received from the insurance company from $100.00 to $150.00 in each case for the use of his name. Innumerable instances could be cited of a similar character.

Now the only question before this court, is whether these lien holders have a constitutional right to bid in the property.

Merely to state the proposition carries its own refutation. The appraisals are made under the control of the court, and they are no more subject to tampering than is any other appraisal in any other bankruptcy proceeding. The full appraised value of the property is paid, which is more than is paid in any other bankruptcy proceeding. The farmer who fought to make this country, who has made it, and who is still referred to as its backbone, is brought to the front, by being permitted to buy his property at the full appraised price. The lien holder admits that if somebody else paid the full appraised price, there could be no constitutional objection. The lien holder admits that if the property was offered at public sale and the full appraised price paid, there could be no constitutional objection. The lien holder does not question the power of the court to order the property sold free and clear of liens. But he claims that he has a constitutional right to be the only bidder for the property, because he owns the lien, and that the farmer has no such right. In

other words, if the lien holder had been given the privilege of being the exclusive bidder, he admits the law would not be objectionable. But otherwise, in the case of the actual owner of the land. The constitutional question presented therefore, is whether Congress has the lawful power under section 8 of the Constitution, to provide that a farmer may be given the option of being the exclusive purchaser of his farm, provided he pays the full appraised value for the same. Or stated another way, can Congress constitutionally permit a farmer to reorganize his business, namely, his farm, provided that by so doing he pays his secured creditors from 25 percent to 50 percent more than does any other person that is permitted to reorganize under the National Bankruptcy Act.

QUESTIONS PRESENTED

The questions presented directly before the court in cases consolidated in this proceeding are two. Each distinct from the other. First, is the validity of section 75 of the National Bankruptcy Act, subsections (a) to (r), and the other involves the validity of the Frazier-Lemke Amendment, subsection (s). It is not my purpose to discuss the constitutionality of section 75 before the amendment. I regard the decisions in the Landquist and Rock Island cases as being determinative of that question in this district, and pass to a consideration of the validity of subsection (s), the Frazier-Lemke Amendment.

THE CONSTITUTION CHARGES THE FEDERAL COURTS WITH VISION AND UNDERSTANDING

In the discussion of this amendment, I shall chiefly

confine my argument to the broader aspects of the questions presented. To a reiteration of the broader and more fundamental principles that govern the Constitution, and the purposes for which that immortal document was framed by those great patriots of the past, who attempted to envision a future in which the Constitution would act as a legal oriflamme, and not as a ball and chain to shackle this mighty Republic to a dead past forever gone. The light in which all of this new social economic legislation must be judged, is the light which illumined the vision of the creators of that great document. The purposes which guided them. The principles that it was intended to safeguard. This emergency legislation rises from the same source as the Constitution itself. Indeed, the Constitution itself was promulgated at no greater crisis in the history of this country, than is the legislation that is now presented for considera[illegible] And the Supreme Court itself has again and again stated that it is its duty, that it is the duty of the Federal courts, not to consider themselves as moles, buried beneath the surface, oblivious to the great economic tides that ceaselessly roll above them. Not to blind their eyes to the ever changing economic kaleidoscope. But that they must take judicial notice of the conditions that confront them. That it is their duty to keep themselves informed as to the economic conditions of the comtry. Time does not permit an extended discussion.

Mention might be made of Atchison, T. & S. F. Ry. Co. v. U. S., 284 U. S. 248, Home Bldg. & Loan Ass'n. v. Blaisdell, 290 U. S. 398, specifically mentioning that a national emergency exists.

In re Cope, 8 F. Supp. 778.

Rock Island Case, 72 Fed. (2d) 443.
In re Landquist, 70 Fed. (2d) 929.

And thus recently United States Judge Atwell, of Texas, in holding section 75 constitutional, said in Paine v. Capitol Freehold Land & Trust Co., 8 Fed. Supp. 500, p. 501:

> "A trial court who sits in this portion of the state, where for several successive seasons the whole face of the earth has been blighted by drouth, is forced to view with complacency almost any effort for the relief of those who depend upon the fruit of the soil for livelihood. Likewise the mind of the judge must be open for the appropriate reception and careful study of any properly fathered effort for the relief of the present situation."

And it is in that frame of mind that every patriotic citizen, every person who has sincerely at heart the good of his country, the good of his fellowmen, must evaluate all emergency legislation. And this is especially true when we approach legislation passed under the specific constitutional authority to make uniform laws relating to bankruptcy.

CONSTITUTIONAL GUARANTIES

As the Supreme Court has said, that while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operations.

Euclid v. *Amber Realty Co.*, 272 U. S. 365, 47 Sup. Ct. 114.
Also see Atchison, T. & S. F. Ry. Co. v. U. S., 284 U. S. 248.

PURPOSE OF THE LAW

The Frazier-Lemke Amendment is essentially emergency legislation. It is limited by its terms to debts which accrued before June 29th, 1934, and it expires by limitation, 5 years after its passage. It is part of that series of laws which Congress in section 78 of the National Bankruptcy Act, stated were enacted because a grave emergency existed in the affairs of the country.

As William Lemke, one of the authors of the Act, said in that classic brief he filed, as amicus curiae in the Radford Case (Br. p. 21):

> "The Frazier-Lemke Amendment is a constant reminder that no creditor, or set of creditors, have a right to destroy society—have a right to destroy agriculture—the basic industry of this nation—the very life of this nation. * * * * * * * This Amendment marks a new epoch—from now on the debtor is going to be considered as well as the creditor. The Bankruptcy Act is going to become an act of conservation and not an act of wreckage. Property and wealth will be conserved in the hands of those who created it—not destroyed. Debtors will be given a reasonable opportunity to make good."

And the Court of Appeals of this circuit in the Rock Island case, 72 Fed. 443, in reaffirming the Landquist case, said:

> "(4) Congress, having the express authority to enact legislation on the subject matter of bankruptcy, was the sole judge of the means and their appropriateness to the purpose of the legislation so long as said means did no violence to the provisions of the Constitution."

The court continued p. 451:

> "Surely, we are justified in giving to the amendment a liberal construction, one that is consonant

with the purposes of this remedial legislation. That which distinguishes this section from the old act—the gist of the change evidenced by this amendment, that which makes it effective—is the provision which calls for a *plan of reorganization.* It calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced) so *that the debtor may live and the creditors will receive more than is obtainable upon a liquidation sale.* The consummation of a fair and equitable plan of reorganization is the goal of the legislation. How could a plan of reorganization be perfected unless the courts restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?"

THE POSITION OF OPPONENTS

The purpose of this law is to keep the farmer on the farm. Not make him a hired hand for the insurance companies or other lien holders.

But these lienholders want the land. They freely admit it. Because no other conclusion can be drawn from their oft reiterated assertion "that the court has no power to take one man's property from him and give it to another." Whose property is involved here? It is the farmer's. But the lien holders take the position they own it. Hence their statement "the debtor must surrender his property to his creditors." The two statements together merely mean that Congress cannot deprive them of the privilege they had under the Bankruptcy Act before it was amended, by which a lien holder could usually bid in the land and apply it against his indebtedness. Hence, their insistence that the Constitution prevents any such regulation as that we are discussing here. That sink or swim, these

greedy creditors must get the last drop of blood, and must be permitted to peel the farmer right down to the hide, and perhaps even shave the cuticle. That is their construction of the Constitution, I say, and I think, that this court, and every other court that carefully weighs the case, is going to agree, that that is not the meaning of the Constitution. That the Constitution, instead of permitting any such avaricious, unreasonable, and uneconomic policy in this day of stress, expressly gives Congress the power to forbid it. I say that the procedure that these lien holders, and other lien holders are adopting, is unconstitutional, and violates every principle that the Constitution was passed to safeguard. That they are the persons, who are urging upon Congress, and upon this court, the adoption of an unsound, illegal, and unconstitutional procedure. That if their advice and their propaganda was followed, that they would turn Congress into an assemblage of pirates, that would scuttle the ship of state, as surely and as aptly as ever did a blood thirsty buccaneer on the Spanish Main sink one of the golden galleons. I say that if their construction of what the Constitution means was followed, the Constitution would become manacles around the wrists, and shackles around the ankles, of every progressive and forward thinking citizen. That so irksome would be these restraints on the liberty of the citizens of this country, that it would be but a short time before they would rise in irresistible revolution, and that shortly we would have no such constitution, of the kind these honorable gentlemen representing the lien holders contend we have. They are here as the exponents of privilege. They are not so numerous as the Hessians of the Revolution, but

just as determined, just as ruthless, even though they mask their purposes in the sweet smiles of legal courtesy, and the docile demeanor of a United States court room. And I think your Honor will agree this language is no exaggeration, when I bring to your attention a little later some examples of the attitude of their clients, taken right from the records of this court.

THE CONSTITUTION

What is this document we are called on here to discuss? Your Honor, it is a constitution. Perhaps for the benefit of our honored brethren it might not be amiss to enquire, what is the constitution. Let the Supreme Court answer!

It has said:

> The "Constitution" is a written instrument. As such its meaning does not alter, that which it meant when adopted, it means now. Being a grant of powers to a government, its language is general, and as changes come in social and political life, it embraces in its grasp all new conditions which are within the scope of the powers in terms conferred, while the powers granted do not change, they apply from generation to generation to all things to which they are in their nature applicable. That which is implied is as much a part of the "constitution" as that which is expressed.
>
> *State of South C.* v. *U. S.*, 26 Sup. Ct. 110, 111, 199 U. S. 437.

So Cooley says, a constitution is not the beginning of a community nor the origin of private rights; it is not the foundation of law nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; it grants no rights

to the people, but is the creature of their power, the instrument of their convenience.

Cooley Const. Lim. p. 37 quoting State v. Ab. Chuey, 14 Nev. 79, 101.

This document, our Constitution, has served in the short space of a century and a half, to build a mighty nation, and a far more complicated civilization than history affords any record of. A country, comprising within its borders what was originally some 90 different nationalities, who inhabit 48 different states, each with its own laws, each with its own viewpoint, each functioning under its own law, and particular economic conditions, yet knit together, indissolubly, with one common purpose, with a common aim, functioning each to each in the closest possible human union, although separated by 3,000 miles of plains and mountains, bordering on the two greatest oceans of the world, and lying between almost the arctic on the North and the tropics on the South. Administering mandates, possessions, or geographic interests, in probably every meridian of the world. Comprising less than 8 percent of the population of the world, it owns 40 percent of the wealth. 80 percent of all the telephones of the world are in the United States. 90 percent of all the automobiles, including the Fords. Imperfect as is this government, it is still the most democratic, the most representative, the closest to the man and the state, than has yet been devised by the mind of man. It was created by the fathers of a country, of whose area over 80 percent was inhabited by Indians. To 90 percent of its area only a few untamed hearts had yet penetrated. Almost three quarters of a century after its adoption it still took 9 months to travel from its East coast to its West

coast, where today the journey can be made in 11 hours. Yet that Constitution, that again I say, rightfully looms so large in the minds of the opposition, created by the representatives of thirteen farming states, whose population were either voluntary or involuntary exiles, whose country consisted in truth of the untamed wilderness and the unharnessed waterfall, has served as a model of government, for nations with centuries of legal learning, centuries of artistic progress, centuries of social science, in back of them. That document has served as a model for every other free nation, which since then has sprung forth from the womb of the world, in every quarter of the globe. So we may well be proud of it. We may not be accused of being overly enthusiastic when we use that rather trite phrase, "immortal document," in referring to it. That constitution was the written climax of a struggle that freemen had engaged in for centuries. Ever since there has been such a thing as history, it has always recorded a struggle against the greed of the privileged. Some peculiar psychology appears to infest the minds of those who obtain power through the exercise of privilege, and the consequent garnering that seems a concomitant. Well did that great court in Mississippi, in Henry v. State, 39 So. 856, 893, 88 Miss 343, say:

> A "constitution" is the magna charta of the peoples rights, the fundamental law of the land, intended not for short periods of time, but for all time.

WHENCE COMES THE CONSTITUTION

Our Constitution was born in the middle ages with the birth of the Magna Charta. That was an explosion that rocked the souls of freemen, and the reverberation

of that explosion will echo in their hearts, and resound in their ears, as long as mankind endures on earth. It was a symbol that freemen could triumph over privilege. When the Magna Charta was signed on the heath of England, the American Republic and every other republic that succeeded since then, had its moment of conception. Life, liberty, and the pursuit of happiness, are the purposes expressed in the document which founded this Republic, and are the purposes which the constitution was intended to safeguard. It was declared that there was conceived in the soul of man in the moment of conception, certain inalienable rights that no despot, physical, mental, or spiritual, had a right to impair or extinguish, and those inalienable rights were declared to be life, liberty, and the pursuit of happiness.

Life is a rather complicated thing to define, I am afraid. But there are three primitive problems connected with it, food, shelter, and clothing. You must have those to have life. You must have an opportunity to get them to have liberty. And unless you have them and have the opportunity to obtain them on equal terms, freemen can't have happiness. It is a small and a concentrated circle. The situation that is confronting a certain portion of agriculture today, as William Lemke points out, is the fact, that those inalienable rights guaranteed to farmers by the constitution of this country, and which the solemn declaration of freemen everywhere say is the inalienable attribute of a freeman are jeopardized by the actions of a "few unreasonable creditors."

THE DECLARATION OF INDEPENDENCE

Old as they are, learned by us as children, forgotten

as men, it might be well to refresh our memories with some of those classically expressed truths, which caused the mighty hand of freemen to call into being this great Republic. Thus the source of our country, the Declaration of Independence, stated:

> "We hold these truths to be self evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure their rights, governments are instituted among men, deriving their *just* powers from the consent of the governed."

As justification for the divorce from Britain, there was submitted an indictment against the King:

> "He has refused his assent to laws, the most wholesome and necessary for the public good.
>
> "In every stage of these oppressions we have petitioned for redress in the most humble terms —our repeated petitions have been answered only by repeated injury."

It was stated, to our British Brethren—we have appealed to their native *justice* and magnanimity, and our pleas fallen on deaf ears. Your Honor, in all verity, these words might well have been uttered by the farmers who today have to deal with their unreasonable and greedy secured creditors.

When the constitution was framed the United States was practically nothing but a farming country. It was called into being by farmers. It was farmers who were the Minute Men at Lexington, fought at Bull Run, and starved at Valley Forge, just as they have starved the past few years.

When they called into being this country, they called it into being for freemen, the symbol of whom had been since time immemorial, the right to own land.

Hence the Articles of Confederation provided:

> "The free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of *free* citizens in the several states."

And in the preamble to the Constitution it was said:

> "We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of *liberty* to ourselves and our posterity, do ordain and establish this constitution of the United States of America."

SECTION EIGHT OF THE CONSTITUTION

And in Section 8 of the Constitution they gave the Congress power to establish uniform laws on the subject of Bankruptcy.

Absolutely unlimited in every respect, except, that such laws had to be uniform. And the Supreme Court has again and again decided that uniformity, merely means geographic uniformity.

And by "Bankruptcy" was merely meant the relation of debtor and creditor. I shall pass by any detailed technical discussion of the cases, such as the Moyses case,[1] the Blaisdell case,[2] or others, which no doubt other counsel will discuss, with far greater ability than I possess, and which my time will not permit, nor the great cases of In re Klein,[3] or In re Reiman,[4] classic in American judicature. But I do want to read to your Honor some extracts from a decision rendered by a

1. Hanover Nat. Bk. v. Moyses, 186 U. S. 181.
2. Home Bldg. & L. Ass'n. v. Blaisdell, 290 U. S. 398.
3. In re Klein, 1 How. 277; Fed. Cas. 7866.
4. In re Reiman, Fed. Cas. 11,673; 11,675.

great, a learned, and a humane Judge, whose decisions are always cited with respect by the courts of the United States. I refer to Judge Dick of the North Carolina Circuit, who rendered some extremely able opinions, shortly after the close of the Civil War, when Congress amended the Bankruptcy Act to secure to debtors the benefit of their local exemptions.

THE QUALITY OF MERCY IS INHERENT IN THE POWER OVER BANKRUPTCY

In the case of in re Vogler, decided in 1873, Fed. Case No. 16,986, 28 Fed. Cas. p. 1248, the question that came before District Judge Dick was whether the bankrupt was entitled to obtain the real and personal property exemptions provided in article 10 of the Constitution of North Carolina, or its equivalent in money derived from the sale of the real estate and personal property in preference to claims for liens. It is interesting to observe that then as now, the "greed of creditors" rendered remedial legislation necessary for the financially embarrassed. District Judge Dick said, 28 Fed. Cas. p. 1248, 1249:

> "Until within a recent period the statute law of this state subjected to execution the lands, person, and chattels of a debtor, and only a few articles of small value were allowed as exemptions to keep the debtor and his family from absolute starvation or dependence upon the charity of neighbors. *This legislation and the natural greed of creditors necessarily had the effect of filling the country with families of paupers who were a burden instead of a benefit to the state. The constitution of this state, adopted in* 1868, *was the commencement of a new, more humane, and enlightened policy upon this subject. The results of the Rebellion had rendered a large number of our people bankrupt in fortune;*

and the convention of 1868 *determined to insert a provision in our organic law, to preserve the liberty of an honest and unfortunate debtor, and secure a home for his family, and thus induce him to remain in our midst, and encourage and enable him by honest industry to assist in restoring wealth and prosperity to the state.* Our feudal ancestors regarded the home and person of the citizen as belonging to the state, and necessary to its security, prosperity, and power. In allowing the homestead, and abolishing imprisonment for debt, except for fraud, the convention of 1868 adopted the same wise policy, but for a far higher object; not for the purpose of making the citizen a ready and efficient soldier in war, but to encourage and enable him to direct his intellect and energies in the arts of peace and the pursuits of industry, and thus contribute to national wealth, prosperity, and advancement."

It might be observed here that we are now emerging from a far greater economic battle, one more wide flung, one whose results have been far more disastrous than that of the War of the Rebellion, yet evidently creditors have not changed. In discussing the attitude which the mind of the judge should have toward such remedial legislation, Judge Dick said, p. 1250:

> *"It is a well-settled rule in the construction of constitutions and statutes, that the intent of the lawmaker ought to be ascertained from the circumstances of the times, and the purposes and remedies in view, and that the judicial department of the government ought to assist, as far as it is consistent with a liberal construction of the organic law, in securing and advancing the purposes and remedies intended pro bono publico."*

In discussing the power of Congress, Judge Dick said, p. 1250:

> *"Congress has the power, under the constitution,*

to pass bankrupt laws and make all provisions which it may regard as necessary to carry out a system of bankruptcy. The purpose of a bankrupt system is to administer the estate of an insolvent person so as to do justice among all creditors by an equitable division of the assets; and then discharge the existing debts of a bankrupt, who in all respects has acted fairly and honestly in surrendering his property. This system is certainly founded in a wise and enlightened policy, as it frees an honest and unfortunate debtor from unexpected financial embarrassments which repress his energies, and from which he cannot extricate himself by reasonable exertions; and enables him to enter again into active business with new spirit and much wisdom learned from the experience of misfortune. He may thus become a good and useful citizen, and a character for honesty, industry, and intelligence will soon give him again employment and credit. If an insolvent person makes an honest surrender of all his property to his creditors, their debts in natural justice ought to be discharged, as they have no moral right to make the debtor a slave and demand the proceeds of his manual or intellectual labor, prevent him from educating and comfortably supporting his dependent family, and thus cause a serious injury to the state. These liberal and humane views as to the relations between creditors and honest insolvent debtors have, in the last twenty years, rapidly impressed themselves upon public sentiment, and form a striking feature in the enlightened and patriotic homestead legislation of a large number of the states of the American Union."

The same judge decided another well known case.

LIENS MAY BE DESTROYED IF NECESSARY

One of the most widely discussed cases ever decided in the United States on the subject of Bankruptcy, is the case of in re Jordan, decided in 1873,

Fed. Case No. 7514, 13 Fed. Cas. p. 1079, also decided by the famous District Judge Dick of North Carolina. In this case, in the course of the bankruptcy, the register assigned to the bankrupt certain homestead lands as part of his rightful exemptions, as against a judgment rendered prior to the ratification of the constitution of North Carolina upon a contract made before the present Bankruptcy law was executed. The question certified to the district judge was whether the bankruptcy law was constitutional, whether it could have a retrospective effect without impairing the obligation of contracts, whether Congress had such power, and whether the bankrupt was entitled to his exemptions as against the lien granted by judgment, etc. Justice Dick held the bankruptcy law was constitutional. That under the Constitution, Congress had absolutely unlimited power to prescribe what should be done with a bankrupt estate, subject only to one restriction, that laws on the subject of bankruptcy should be uniform. He stated that Congress under its general bankruptcy power *"could void all liens, whether existing by statute, by usage, by special contract, or at common law."*

He said, in re Jordan, Fed. Case No. 7514, 13 Fed. Cas. p. 1079, 1080:

> "As it was easy to foresee that there would be many business transactions and much commercial intercourse between the citizens of the several states which would necessarily produce considerable individual indebtedness, which might result in extensive financial embarrassment, it was obvious to the framers of the federal constitution that the benefits of a wise, humane and general system of bankruptcy, which might, under certain exigencies, become necessary to promote the happiness and commercial prosperity of the nation, could only be effectually established by the federal gov-

ernment adopted by the people of the several states for general and national purposes. To provide for any emergency that might arise for a general bankrupt law, the constitution vested the necessary sovereign power in congress with no other limitation than that the laws upon such subject should be uniform in their operation among the several states."

He continued, p. 1080:

"Congress certainly has the plenary and paramount power, save the restriction above considered, to pass bankrupt laws which will not only impair the obligation of contracts, but entirely discharge the debtor from such obligations, no matter when or where contracted. *Congress, also, has the power in establishing a uniform system of bankruptcy to do away with the effects of liens created by the judgments of any court. If a judgment can be discharged by a bankrupt law there is no reason why a lien which is an incident to a judgment cannot also be discharged.*"

And the learned judge also said, p. 1080:

"The homestead laws of this state do not abolish judgment liens, but merely postpone the time of their enforcement. This modification of a legal remedy may well be regarded as reasonable by a court of justice which takes into consideration the anomalous condition of things existing when the modification was made, and that it was prompted by a wise and humane policy which must necessarily result in the general public good. While the states are prohibited by the constitution from impairing the obligation of contracts—either directly, or by virtually abolishing existing remedies—no such inhibition is imposed upon congress. *The power expressly conferred upon Congress to enact uniform bankrupt laws, is necessarily an express power to do away entirely with contracts, as such a result is the very object and essence of bankrupt laws. But it is insisted that while con-*

gress may have this paramount power over contracts, it exceeds its authority in enacting that state exemptions shall be 'valid against liens by judgment or decree of any state courts.' This is equivalent to saying that the contract may be impaired, but the remedy must not be interfered with—the principal may be destroyed, but the incident is protected against legislative action. There is nothing in the nature of liens why they should be thus specially protected, as they are not vested rights; but there are strong reasons why they should not be recognized and enforced by bankrupt laws. The enforcement of liens is certainly contrary to the policy of a general system of bankruptcy, the object of which is to distribute the estate of an insolvent debtor among all of his creditors, upon the principle that equality is equity. Liens, upon general principles, certainly deserve no special favor and protection in bankrupt laws. The bankrupt act, before the amendment of March 3,1873, in express terms avoids liens valid under state laws and created by the levy of an attachment within four months before the commencement of proceedings in bankruptcy, and this action of Congress is generally conceded to be constitutional. Congress has even interfered with vested rights, for by the thirty-fifth section of the bankrupt act, assignments and conveyances made under certain circumstances are avoided, although such assignments and conveyances are valid at common law and under the laws of the state, and the parties have acquired a complete title and possession of the property conveyed. I have a very decided opinion that congress did not exceed the limits of its constitutional powers in enacting the act of March 3, 1873. **I also think that Congress, under its general powers over the subject of bankruptcy, could avoid all liens, whether existing by statute, by usage, by express contract, or at common law."**

And just last week, there has been published an opinion by Judge Symes of Colorado, which for reason-

ing, and learning, is worthy to be considered with those of Judge Dick. Let me read just two brief extracts, from *In re Cope*, 8 *Fed. Supp.* 774. Thus, on page 780:

> "This grant of power to the Congress to legislate on the subject is general in its terms, paramount, and unrestricted, International Shoe Co. v. Pinkus, 278 U. S. 261, at page 265, 49 S. Ct. 108, 73 L. Ed. 318, except, as stated in Silverman's Case, Fed. Cas. No. 12,855, the laws passed pursuant thereto shall be uniform throughout the United States. This uniformity is geographical and not personal. Hanover National Bank v. Moyses, 186 U. S. 181, 22 S. Ct. 857, 46 L. Ed. 1113."

And on page 784:

> "Finally, we must not overlook the importance of section 78 (11 USCA § 301), a solemn declaration of policy by the Congress that a national emergency exists, which renders imperative the further exercise of the bankruptcy powers of the Congress. The Supreme Court has said in the Minnesota Case, Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231, 239, 78 L. Ed. 413, 88 A. L. R. 1481, that while Congress cannot create powers, it can, under an emergency, exercise powers that have heretofore lain dormant. It is not for the court to question this declaration by Congress, which may be said to be an exercise of the broad police power vested in the federal government, and which exists independent of bankruptcy. * * * In conclusion, I am of the opinion that while the so-called Frazier-Lemke Act goes further than any provisions of the Bankruptcy Act existing at the time of its enactment, that it is within the bankruptcy clause of the Federal Constitution. This power is plenary and unlimited, and cannot be destroyed by other provisions or amendments of the Constitution."

THE GREED OF CREDITORS

The farmers of this district today have forgotten the years of hard work, have forgotten the years of back-breaking toil that they have put into their farms. They have forgotten the thousands and tens of thousands in many cases, that each of them has invested in those farms. They are fighting today just for shelter, for a chance to educate their children, and an opportunity to get some clothing, and for reasonable security that they and theirs are going to eat. That is the bald situation before this court today. That is the bald situation that confronted Congress when this law was passed, and that bald situation has been brought about and has been perpetuated, and is being continued, by nothing more nor less than the attitude of a few and a specific number of unreasonable creditors. And that is why we are here. And that is why Congress passed the Frazier-Lemke Bill. I could stand before your Honor until I collapsed from weariness, and until every one in this court room collapsed from weariness, and tell you of instance after instance, from my own personal experience, one humble lawyer from the cornfields of Benton County, of instances, each so horrible, so revolting, so shocking, to a person who had any human feeling, any human understanding, any sympathy, any vision, considering that in each one of these cases a man's home has become involved, because of a world cataclysm, that I venture the assertion, that your heart would weary, and you would cry "stop," long before your ears were stopped through physical weariness. You think these are extravagant statements?

These lien holders that are before your Honor, are tearing at this last and only bulwark that stands be-

tween the farmer and eviction from his home, and will have you believe that they have an inalienable right to jeopardize his right to liberty, happiness, and that the Constitution doesn't safeguard the farmer from that ruthless purpose, and prevent in this district, individual oppression just as shocking, as any that ever brought about the adoption of the Magna Charta, or caused the Revolution, that resulted in the adoption of the Constitution. And I can go to the records of this court to prove some of them. Let me take the time of the court for just a moment for a few typical cases. I have before me a letter from the insurance company in the McDuffie case, Cause No. 2221 here.

In this case the debtor had two farms. One of 80 acres and one of 120 acres. On the 120 acres the holder of a first mortgage for $4,000.00 agreed to scale down to $3,500.00. On the 80 acres the Mutual Benefit held a first mortgage of $5,000.00. Knowing its attitude, we offered it $5,000.00, the full amount of its claim, and in order to raise that amount, other secured creditors took less than I believe they were justly entitled to. I quote from a letter from their attorney, dated January 25, 1935, to me, in which he said:

> "The local counsel in this case * * * advises that the debtor is willing to offer $5,000.00 in payment of the claim of the Mutual Benefit Life Insurance Company, but my instructions from that company are that it will accept $5,000.00 as of October 1st, 1934, with interest thereon at 5 percent to the date of payment * * *."

So Mr. McDuffie had to file a petition in bankruptcy.

And here is a communication from counsel for another insurance company, the Northwestern, in the

Pitstick case, Cause No. 2184. We offered it $12,500.00 in the conciliation proceeding. The insurance company agreed to accept $13,600.00, but finally stated it might take $13,000.00. We said we would try to make it, and the following morning, I received this letter, in which it was stated:

> "It stands to reason that the greater the amount offered the company, the greater will be the possibility of favorable action by the committee. If therefore in making the figures you try to make the net proceeds as great as possible, you will thereby enlarge the possibility of favorable action by the committee. For example, if Mr. Pitstick would personally pay recording charges and personally arrange for the necessary insurance, you might be able to submit a figure to the company sufficiently attractive to it * * *"

A matter of only $40.00 or so on a $13,000.00 deal.

And perhaps your Honor will recall the Blanchette case, Cause 2203, where your Honor granted an injunction, where foreclosure was filed against a man who had owned that farm for 35 years, over a difference of $136.00. Or the Shannon case, Cause 2172, a default case, where attorney's fees of $1,460.00 were taxed, although one of the attorneys works on a monthly salary, and I am sure the local attorney did not receive over $150.00.

These are not exceptional cases. They are typical.

A TYPICAL INSTANCE JUST REPORTED

Let's go to some of the cases in the law books. The Chemical Bank and Trust Company of New York is a very holy financial institution as your Honor knows. To illustrate that the same warp and woof of remorselessness, of treachery, of inhumanity, is inherent in the

hearts of these financial giants: In this case the Chemical Bank and Trust Company had a mortgage on a woman's home. It foreclosed. The mortgage was for $10,000.00. It got a decree for $11,000.00. It bid the property in for $500.00, and took a deficiency judgment for $10,500.00. Six months later they sold the property for $12,000.00. In the meantime the little lady had obtained some property, so these generous gentlemen promptly issued a deficiency execution against her for the $10,500.00 deficiency. Instead of being crushed, this particular mouse uttered a protesting squeak, with the result, that she hired lawyers, and they happened to find some statute of New York under which this deficiency execution could be restrained. That is the case of Chemical Bank and Trust Company v. Adam Schuman Associates, 268 N. Y. S. 674.

The opinion of the Supreme Court of New York in that case is extremely illuminating, as illustrating the condition that confronted this country, and I wish to read an extract from it to your Honor. The court said, p. 76:

> "What 'basis of fact or circumstances' exists for challenging this travesty, miscalled an auction sale? It seems almost superfluous to call some recent happenings to mind. Ten months ago every bank in the land was closed and a lamentable number of them have never since reopened. Substantially all of the mortgage guaranty companies in the state are being wound up, or, stated less bluntly, 'rehabilitated,' and thus a great industry, the backbone of building, as well as of conservatism and thrift, is in ruins. The insurance companies, savings banks, and trust estates, formerly generous providers of mortgage money, are literally surfeited with holdings of real estate through foreclosure or default. The Legislatures of various

states, including our own, have declared the existence of a public emergency and enacted laws designed to relieve helpless debtors. The federal government, through sheer necessity, has embarked upon a tremendous lending program in an effort to save the homes and farms of the distressed. Banks have largely abandoned their time-honored function of accomodating the worthy borrower and, instead, pride themselves upon their liquidity, refuse to pay interest on deposits, and bring forward fatuous schemes of charging depositors for safeguarding and using their funds. Possession of the very gold with which this judgment debtor doubtless covenanted to pay her obligation is now declared a crime. Every day at the real estate exchange witnesses the solemn, but costly, farce of offering dozens of parcels of valuable realty, which go to the respective mortgagees without a single competing bid.

"It was into this maelstrom of economic forces that Margaret Ferguson was plunged through the default of her grantee and the consequent election of the plaintiffs to call their loan. The law presumes that a wide-awake debtor will, under such circumstances, apply to and obtain, from another lender, equivalent accommodation and thus protect herself against a possible deficiency judgment. Such a presumption is well enough in normal times, but it has no proper place in a topsy-turvy period like the present. In truth and in fact, mortgage money is, and for some months has been, practically unobtainable, and one need do no more than compare the day-to-day record of mortgage transactions with those of a year or two ago, to satisfy himself on that point. These considerations lead to the conclusion that the sale price of the property was so grossly inadequate that no rights, except possibly, those of innocent third parties, can be predicated thereon, and further that there is a sound 'basis of fact and circumstances' for equitable intervention."

And your Honor, let me say this. As I have said before,

the foregoing are typical cases. They can be reiterated by the dozen, perhaps hundreds, in this district alone. I have brought with me Mr. Robert G. Williams of Monticello, Secretary-Treasurer of the Monticello National Farm Loan Association, the largest in the state, and incidentally rated number one by the Federal Land Bank. He knows the inside story of hundreds of farmers, and will I may state, corroborate every word I have said as being nothing but the cold sober truth, typical of this class of cases.

How can these creditors expect the farmer to pay 100 cents on the dollar?

Great nations have been unable to pay their debts. The British Empire in its note to our state department, June 1, 1934, in confessing its inability to meet its obligations, said:

> "* * * it was found impossible to arrive at a settlement acceptable to the two governments in face of the unprecedented state of world economic and financial conditions."

Tens of thousands of industrial corporations and a number of railroads are scaling their indebtedness to conform to their income, and present economic conditions under Sec. 77 (B). Many municipal corporations under section 80. And they are retaining their property. Why should the farmer, the backbone of this nation, yes, the founder of this nation, the defender of this nation, not be permitted to have a similar privilege. But even under the Frazier-Lemke Law he doesn't get it.

He has to pay the full appraised value of his property. A condition exacted from no other individual.

Section 70 B of the Bankruptcy Act, applying to other individuals, expressly provides:

"Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than 75% of its appraised value."

And bankruptcy courts usually recognize a sale of a bankrupt's assets at 75 percent of the appraised value as being so good, that the trustee usually does not apply for leave to sell on that basis, and if he succeeds in making such a sale, the court says "Bless you, thou good and faithful servant."

But the farmer, has to pay 100 percent of the present appraised value, and perhaps two or three times that much five or six years hence.

THESE CASES DO NOT SERIOUSLY AFFECT THE INSURANCE COMPANIES

But no doubt it will be said, these insurance companies will go to the bow wows if they don't force the farmer off the land, or get 100 cents on the dollar. That it is their policy holders' money they are safeguarding. That if they can't wreck these farmers they can't pay their policies. Let us see—

This subject was exhaustively debated in Congress. I have all the figures here, but won't weary you with them. Evan Clark's book, "The Internal Debt of the United States," was accepted as authoritative. He estimated that all the insurance companies combined held about $2,146,000,000.00 of farm mortgages.

In the "Wall Street Journal" for July 3, 1934, Governor Myers of the Farm Credit Administration stated only 14 percent of the commissioner's loans, which are made to the most heavily indebted farmers, were delinquent. Two thirds were for less than 30 days.

So we can safely say, that judging by this, not over 10 percent of the mortgage indebtedness held by the insurance companies can, by the greatest stretch of the imagination ever come under the Frazier-Lemke bill. A total of roughly $200,000,000.00. The maximum loss under present conditions, even if the farmer through some legerdemain could immediately pay the appraised value of his property would not exceed 25 percent. So we have a total loss to all the insurance companies of the country of some $50,000,000.00 as against their entire assets of approximately 22 billion.* Why your Honor, there is many an individual company who today would be glad to get out from under some single underwriting it made in the good old days, for no greater loss than that whole amount.

RAILROADS REORGANIZE AND SCALE DOWN. THESE SAME LIEN HOLDERS FAVOR SUCH PROCEDURE

I was recently rather amused to receive a communication from the protective committee formed to protect the holders of Chicago & Eastern Illinois Railway bonds, 5's of 51. It was stated that the Mutual Benefit Life Insurance Company owned several millions worth of these bonds, and I think its president is a member of the protective committee. The bonds today are selling at about 8c on the dollar. A plan of reorganization has been worked out, and it is being sponsored by this protective committee, which will involve a very drastic scaling down of these bonds, and they will have to be scaled down. On the basis of the market quotation of $8.00, the railroad is selling for about $6,000,-

*Insurance Year Book, 1934, gives assets of 318 Legal Reserve Companies in U. S. as $21,197,582,350.00.

000.00. This railroad a number of years ago was given a physical valuation by the Interstate Commerce Commission of $65,000,000.00, and since then it has invested some $20,000,000.00 in its property, so that today, the physical valuation of the road is some $85,000,000.00, which is considerably more than the face amount of all its outstanding securities. Now Mr. Mutual Benefit Life Insurance Company doesn't go down to the Chicago & Eastern Illinois road and grab a locomotive off of the track, and attempt to squeeze out of its entrails, the other 92c, which represents the difference between the market value of the bond and its face value. No. And why not? Because the locomotive being an inanimate thing, can not suffer, and if Mr. Mutual Benefit squeezed it hard enough, it would merely disgorge a few dying ashes, which at best, could only be used to cover *over* the trail of the field man, to whom had been delegated that particular task.

But in the case of the farmer, what does the field man do? He tries to squeeze the farmer and squeeze not 92c, but perhaps the 2 or 3 cents difference that he has been offered. And why does he do it? Because the farmer has feeling, he has emotions, he has a brain, a soul and a heart, and these fellows come out, sometimes day after day, and week after week, and they work on the farmers, and tell them the most terrible lies that the mind of man ever conceived, and then offer them the most specious and deceiving inducements to get $15.00 here, or a deed here, or a deed in the disguise of a so-called "certificate of entry" there, so that their rights may be bartered away.

The latest wrinkle is to offer to combine the mortgage and delinquency in one mortgage at 1 percent

interest for the first year, provided the farmer will give them a deed to the farm. And they will then give him a deed back with a new mortgage. The purpose of this is to create a debt subsequent to June 28th, 1934, and hence not covered by the Frazier-Lemke Amendment.

WHAT IS A DELINQUENT MORTGAGE WORTH

If the farmer was inanimate like the locomotive, these insurance companies would take the value of their mortgages, their real value, in the cases where they are in default. Just as they do in the case of railroad bonds and industrial bonds that are in default, and give the debtor a new lease on life to assist him in doing his part in building up the country.

What is a mortgage in default worth your Honor? What would you pay for a mortgage in default no matter what the value of the land is? It is just worth so much, if the farm can't produce enough to pay the interest on the mortgage, and the farmer has tried faithfully to meet his obligations, and I have interviewed 500 of them, and I have yet to find one that has not tried to do it. That mortgage is certainly not worth 100 cents on the dollar. *Any more than is the 5% bond of the C. & E. I. Ry. now selling at 8c on the dollar, or at value of about six million dollars for a property that could not be reproduced for probably fifteen times the market value of its liens. So why should the same lien holders demand that a defaulted farm mortgage be paid* 100 *cents on the dollar when the income and the value is not there.* Why should they have it? What moral law is there which gives them the right to make the farmer pay it if he can't pay, if he has

tried to pay, if he has borrowed from his relatives, after he has borrowed from his friends, after he has given them everything he can? You answer, the security. That will be the answer, and that I see in your Honor's mind right now. The security. And what is the security worth? Merely a future imaginary value, thru which the lien holders hope to recoup losses from other investments.

THE EMERGENCY FARM MORTGAGE ACT OF 1933

Your Honor is bound to take judicial notice of the laws of the United States. At the end of 1932 and the beginning of 1933, corn was selling at 12c. We won't harrow your memory with the price of the other grains. 90 percent of the mortgages were in default. 90 percent of the taxes weren't paid. So Congress passed the Emergency Farm Mortgage Act of 1933, which was supposed to be a farm relief measure. Under this law the Federal Land Banks were given several billions of dollars to lend to farmers. It was provided that in valuing the land of the farmer, the banks should not take the low value of the land as it existed at that time, but had the farmer gone into bankruptcy and had his property been sold at a bankrupt sale, that is what his land would have brought, but it said that they should use the 1909 to 1914 prices and income as a standard, and they should arrive at the value of the land and loan 75 percent of that value. The commotion that immediately arose among the lien holders, your Honor, is comparable to nothing else than feeding time in a zoo, the throwing of raw meat to the hungry lions and tigers. A law passed for the direct relief of

20 percent of our population, and which indirectly affects perhaps 40 percent of our population, a farm relief law, or perhaps more accurately, farm relief legislation, and which incidentally, was intended as reasonable relief legislation for lienholders, was immediately turned into *exclusive* relief legislation for joint stock land banks, insurance companies, and other holders of farm mortgages. Remember until that legislation was passed, the market value of lands in Benton County, the premier county of Indiana, was not over $25.00 an acre? The income off of those properties was not sufficient to pay even the taxes, had the entire income been devoted to that one purpose, and had the farmer and his family by some mysterious agricultural miracle been enabled to exist.

Why did Congress pass this law. It was passed pursuant to that mandate in the Constitution, that the inalienable rights of mankind are, life, liberty, and the pursuit of happiness, and Congress was fair. It might well have provided that the farmer could have gone through the wringer and the lien holders only get the market value of his land, $25.00 an acre. But Congress erred on the side of fairness. It said no. We recognize that these joint stock land banks have $500,000,000.00 worth of farm mortgages. We recognize that these insurance companies hold another $2,000,000,000.00 of farm mortgages. We know that they are going to take severe losses on other investments, so we will do what has been done from time immemorial. They soaked the farmer under the guise of saving him. They soaked him. They didn't provide, as they provided subsequently in the case of railroads, or in the case of other individuals, or in the case of corporations, or in the case

of cities, that securities should be scaled down to their market value. No. They said, take the 1909 to 1914 index as a standard, and place on the back of the farmer a burden that he can't possibly carry unless prices advance several hundred percent. Now you would suppose in all conscience, that that would be enough. That Mr. Mutual Benefit Life Insurance Company, or Mr. Lafayette Life Insurance Company, or Mr. John Hancock Life Insurance Company, that had a mortgage on property for $70.00 an acre, and was able to get $60.00 an acre, or where he had $80.00 an acre, he could get $70.00 an acre, would be well satisfied with what Congress had done for them, because $70.00 an acre was two or three times the market value of the land when the law was passed. Fortunately, prices advanced. The land bank's interest was cut down. Where a farmer had a low loan on his land of $50.00 or $60.00 an acre, he got a little relief. Now let us see what happened. Remember this was not a normal period. This wasn't a time when the farmer could go anywhere and get a first mortgage like he could ten years ago. If you held a first mortgage on my farm, and your mortgage was due, and you wanted your money, and you had a mortgage on my land at $100.00 an acre, and it was worth $200.00 an acre, and I could go to any one of ten different places and borrow $100.00 an acre, you had a perfect right to insist that you get your $100.00 an acre. Nobody could criticize you for that attitude. But this was a time of storm and stress in this country. As Congress pointed out, a very severe emergency. Congress made this loan to the farmers as a kindly philanthropic gesture, to carry out the mandate of the Constitution, for my benefit,

and for your benefit. It was not for your benefit exclusively as lien holder, and it was not for my benefit exclusively as a farmer, but it was primarily for my benefit because I was one of the great class that helped build up this country.

Forty percent of our population, directly, or indirectly, are dependent upon agriculture for a livelihood, and our entire country is dependent upon agriculture for its economic prosperity. So this legislation was passed primarily for my benefit, but also to help you.

So the land banks in carrying out the mandate of Congress, attached certain conditions to their loan commitments. One of those commitments would be "pay all debts." When the farmer borrowed this money, he had to pay all debts with it. The creditors had to get together and scale down, and divide this money. But what did the insurance companies do? What did the lien holders do? Immediately they demanded 100 cents on the dollar—the devil with the other creditors. This was money belonging to them! It was to be loaned on the land. No! These new Federal loans were not to be loaned on the land. **They were loaned to the farmer on his farm.** They were loaned to the farmer to pay his debts, and Uncle Sam took from the farmer the only security that he could give in the hope that perhaps some day Mother Nature, plus the ability of the farmer, might make that loan good. It was a two-fold deal. The land plus the farmer. Why there wasn't a loan company on earth that would loan the farmer a dime. There wasn't anybody who would buy his land. Ye, these insurance companies who prate about the Constitution and how it protects them,

had the effrontery to demand that they get their loans 100 cents on the dollar, although they didn't have a loan in their treasury, outside of Government bonds, that was worth 50 cents on the dollar at that time.

In the case of railroads such as the one I instanced, the insurance companies are willing to scale down their lien to only a mere fraction of the appraised value of the railroad, or its reproduction value. But in the case of the farmer, they strenuously object, again and again, to even scale down a fraction of one percent, let alone the maximum reduction in any case that I know of, of 25 percent. And I can safely venture the assertion that the average reduction in all these Frazier-Lemke cases would not exceed 18 percent.

So when the Federal Government has offered to loan money to these farmers that nobody else would loan, isn't the Government justified in starting the farmer out with a clean slate? Is there anything wrong in its demanding that all creditors be paid? Is there anything unreasonable in its asking these insurance companies to scale their mortgages down to the actual value of the mortgage, or to 50 percent above the actual value of the mortgage? I don't think your Honor will think there is. Great corporations are reorganizing. And as Ed Krauthoff pointed out in his great brief in the Radford case bankruptcies aggregate about one billion dollars a year, and are usually netting 10c on the dollar. The creditors of the farmer, the secured creditors, in most cases, get pretty close to 90c on the dollar. Is there anything wrong in the method by which the Federal Government is giving him money which gives the farmer some kind of assurance that perhaps he may pay interest on that

90c on the dollar? But what about the creditors—these insurance companies? The answer is self-evident, they want the land. If inflation comes—if we pull out of the depression—this land may go back, and as there are very few loans on this land over $90.00 an acre, and most loans $70.00 an acre, they will recoup very nicely what they have lost on their other securities.

CONCLUSION

Now our Honor, as Judge Atwell has said, the foregoing discussion illustrates the frame of mind in which the court should approach this great question. Your Honor's decision directly affects the life, liberty, and the pursuit of happiness of a great many people. These farmers have to cope with almost insurmountable obstacles. First, are the vagaries of nature.

They cannot all adopt the attitude of the Georgia cracker who was recently interviewed by an AAA investigator.

He found this gentleman farmer seated at ease on his porch with his trusty corncob in his mouth, and his feet on a soap box, evidently well satisfied with himself and nature. Optimistically the New Dealer said:

"Well George, had a good cotton crop?"
"Nope. Didn't plant nothing. Afraid of the boll-weevil."
"Well, how was the corn?"
"Wa-al, didn't plant none neither. Afraid it wouldn't rain."
"But surely you had a good potato crop?"
"Nope," replied the Cracker. "Didn't plant anythin. Fraid of the bugs."
"But surely," said our friend from Washington, "you had a crop of something."

"Nope," said the Cracker. "I didn't plant nothin. You see Mister, I just played her safe."

Farmers are a trustful and an honest class. They trust their fellowmen. I never realized just to what extent, until the last 18 months that I have been doing business for them and with them. I now understand how farmers can be sold the Brooklyn Bridge and the Masonic Temple. Why they buy gold bricks, because the insurance companies are handing many to them every day.

There is a little obligation, it seems to me, on the strong to protect the weak. And they need protection your Honor, because verily are they babes in the woods, and the wolves are on the edge of the forest.

Now your Honor, this legislation pending before you was passed under a specific authority contained in the Constitution.

As judges have said, bankruptcy means merely the relation of debtor and creditor. Congress under a specific grant of power to affect the relation of debtor and creditor, can do anything it wishes with that relation. The attorney general, and the general counsel of four great executive departments have given their opinion that this law is constitutional. Several district courts of the United States have stated that it was constitutional. The decision of the District Court of Colorado in *in re Cope*, is so clear, so well reasoned, that really nothing can be added to it. I merely ventured to take up the time of the court to talk about some of the broader aspects, not your Honor, so much with relation to the constitutionality of this law, because it is inconceivable that your Honor would hold it, or could hold it, unconstitutional, but to take ad-

vantage of the opportunity to reiterate, and to drive home, some of the principles which must guide the court in deciding many of the questions which must come before it under this law. And there are a great many questions which these avaricious lienholders are going to raise, and which will come before your Honor for decision, and it is very important that you receive complete illumination on both sides of the question.

I thank you.

H. C. LUST

NOTE. Since the foregoing argument was made, the United States Circuit Court of Appeals for the Sixth Circuit has upheld the validity of the Frazier-Lemke Act, in *Louisville Joint Stock Land Bank* v. *Radford*, by a decision filed February 11th, 1935.

The court said inter alia:

> *"The public welfare sought to be conserved by the assailed legislation not only transcends the interest of the class to be affected, but is rooted in the traditional policy of the United States to prevent the development of a great class of dependent tenant farmers comparable to the peasantry of European states. This policy was early reflected in the disposition of the public domain, the homestead laws, and the limitations written into the railroad land grants restricting sales in quantity and price and to actual settlers. Oregon & California R. R. v. U. S.*, 238 *U. S.* 393."

The court continued, discussing the alleged right of the lien holder to bid in the property:

> *"The principal inquiry, however, that suggests itself in relation to the appellant's grievance, and this in respect to all of the specifications of its complaint, must concern itself with consideration*

of what it is in fact deprived through the operation of the challenged law. It is true that the appellant will not be able to collect the face value of its mortgages, nor the accrued interest thereon. But this is a loss it has already sustained, not through the operation of the statute, but through the default, insolvency and bankruptcy of its debtor. But for the bankruptcy, it would still have its right to foreclosure, and to bid in the property. It is by the measure of that right that the reasonableness of § 75 must be judged. The appraisers have declared and the court has found that the fair value of the mortgaged property is $4,445.00. *The fairness of the appraisal is not attacked. That the appellant offered to buy the property from the trustee for an amount equal to the mortgage debt is of course beside the point. Such offer can have no possible bearing upon the fair value of the property. It is this value that forms the base for the price the bankrupt is to pay upon the exercise of his option. True, the mortgagee, upon bidding in the property under foreclosure, has the expectation that by holding the property for a time values may be restored, and it may recoup part or all of its loss. The statute does not take from him this opportunity. It provides for a reappraisal at the end of five years—the option period—upon the mortgagee's request—and the debtor must pay the reappraised price or the original appraised value at the mortgagee's option."*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 717

LOUISVILLE JOINT STOCK LAND BANK,

Petitioner,

vs.

WILLIAM W. RADFORD, SR.

SUPPLEMENTAL BRIEF FOR RESPONDENT.

Analysis of the Frazier-Lemke Act.

In construing section 75 of the Bankruptcy Act of 1898, including subsection (s), the Frazier-Lemke amendment, the Court must be guided by the language of the Act, and not by the overzealous statements of counsel, who read something into the Act that is not there. As an Act of Congress, it is entitled to the greatest respect and the most careful and painstaking consideration by this Court. It is presumed to be constitutional. The burden of proof rests upon those assailing its constitutionality. If the Act is susceptible of two constructions, one constitutional and the other unconstitutional, then it is the duty of the Court to hold it constitutional.

This Act must not be confused with State acts. It is an Act passed by the Congress of the United States on the subject of bankruptcy—passed under the grant of power given it by the Federal Constitution. "Congress shall have power * * * to establish * * * uniform laws on the subject of bankruptcy throughout the United States", and "to make all laws which will be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this Constitution in the Government of the United States, or in any department or officer thereof." U. S. Constitution, Art. I, par. 8. On the subject of bankruptcy, the Constitution vests full and complete, not only partial, legislative power in Congress. There is no limitation on this power, save and except such as may be found in the Fifth Amendment. "No person shall * * * be deprived of life, liberty or property without due process of law". It is conceded by all that a person may be deprived of his life, liberty or property by due process of law. The question is: What is "without due process"? No final definition of this has, or perhaps ever will be, given. Generally the courts have, in effect, held that the Act must not be so unwarranted, arbitrary, and unreasonable as to shock one's conscience.

Section 75, including subsection (s), is a part of the Bankruptcy Act of 1898, as amended, and must be construed in conjunction with the entire Act, and not as a complete Act in itself. That was the intention of Congress, and that was the construction it was given by the District Court and Circuit Court of Appeals below, in the case at bar. That is also the construction given Section 75 by Judge Parker, of the Circuit Court of Appeals, Fourth Circuit, in his able and exhaustive opinion, in the case of *William W. Bradford, Jr., Bankrupt*, v. *Michael W. Fahey*, holding Section 75 and subsection (s) constitutional. This

decision was rendered on the very day that the arguments in this Court were completed in the case at bar, and we take the liberty of reproducing the opinion in full in the appendix of this brief, page 15.

The Frazier-Lemke amendment to Section 75 is a bankruptcy statute. No person can take advantage of this Act unless he can qualify as a bankrupt under the definition given by this Court in the *Rock Island* case, and under the definition given by courts generally as to what constitutes bankruptcy. The Act itself states the requirements. "• • • A petition may be filed by any farmer stating that the farmer is insolvent, or unable to meet his debts as they mature." (Subsection c, Section 75.) The Act is further limited to farm debtors. "The term farmer means any individual who is personally *bona fide* engaged primarily in farming operations, or the principal part of whose income is derived from farming operations." (Subsection r, Section 75.) This is substantially the same definition of a farmer given *In re Mackey*, 110 Fed. 355. We submit that this is a proper and legal classification.

Subsection (s) provides that if a farmer debtor is unable to obtain the acceptance of a majority in number and amount of all the creditors to a composition or extension proposal, he may amend his petition or answer *and ask to be adjudged a bankrupt*. It provides for an appraisal of all of the bankrupt farmer's property, whether encumbered or unencumbered, and for the setting aside of his exemptions, subject to any liens thereon. It provides further that the bankrupt farmer may retain possession of part or all of the remainder of his property, and pay for same under the terms and conditions set forth in paragraph 3.

Paragraph 1 of subsection (s) provides that the appraisers shall appraise all of the property of the bankrupt, at its fair and reasonable value, not necessarily the market

value, and that it shall be made in all respects, *with rights of objections, exceptions and appeal according to the Bankruptcy Act;* and that in case of real estate, either party may file objections or exceptions, and appeals, *within one year from the date of the order approving the appraisal.* The appraisers are appointed under the provisions of the Bankruptcy Act, *and are under the control and supervision of the court;* and the creditors have all the rights under subsection (s) that they had prior to this amendment. Surely there is nothing unconstitutional about this.

A careful analysis of this Act will reveal that there is nothing new about it. It is true that it applies well established principles of law in a little different way. It applies the same principles to agriculture that Section 77 applies to the reorganization of railroads. Section 75 of the Bankruptcy Act, as amended by subsection (s), no more restrains, or deals in no more arbitrary manner with creditors, than Section 77 deals with the creditors of railroads. Under both of these Acts, *the property is not sold, or the possession taken away from the owners and given to the creditors, nor are they allowed to bid,* but possession is retained by the debtor, and provisions are made for the creditors to receive the value of the property. Courts of bankruptcy have always used appraisers to establish the value of exempt property. Why cannot these same appraisers be used to establish the value of non-exempt property?

This Court has just held that Section 77 is constitutional. Section 77b, which contains the same principles of law, has just been held constitutional in the case of *Thomas Campbell* v. *Alleghany Corporation,* Circuit Court of Appeals, Fourth Circuit, No. 3831, referred to in our main brief. Surely Congress had the right to extend these principles of law to agriculture, the same as it did to railroads and to

industry. There is no difference in fact between these Acts. As is shown in the Attorney General's opinion, submitted to the Court with this brief, these acts must stand or fall together.

Paragraph 2 of subsection (s) provides that after the bankrupt farmer's exemptions have been set aside to him, subject to existing liens to an amount equal to the value, the possession of all or part of the remainder bankrupt's property shall remain in the bankrupt, under the control of the court, subject to a general lien as security for the payment of the value thereof, to the trustee of the creditors, such liens to be subject and inferior to all prior liens, pledges or encumbrances. The Act provides that such *prior encumbrances shall remain in full force and effect*, and the property covered by such encumbrances shall be subject to the payment of the claims of the secured creditors, holding such liens up to the actual value of such property as fixed by the appraisal. The Act provides further that liens on livestock shall cover all increase, and liens on real estate shall cover all rental received, or crops grown thereon, by the debtor, as security for the payment of any sum that may be due or past due, under the terms and provisions of the Act, until full value of any such particular property has been paid.

The creditors certainly get all the protection that it is humanly possible to give them under existing conditions from a bankrupt estate, except the bankrupt's property. This, Congress has seen fit to withhold, in Section 75, for the benefit of agriculture; in Section 77, for the benefit of railroads; in Section 77b, for the benefit of industry; all for the greater benefit of the people as a whole, for the public good. There is nothing unconstitutional in any of these Acts. Congress has enacted them in its discretion, and that discretion controls, unless it is so clearly unreasonable and unwarranted as to violate the fundamental law.

"This procedure practically compels the creditors to agree to a sale of the property to the debtor at its appraised value and seems to be a most drastic interference with their rights. Nevertheless its constitutionality may be sustained. The debtor has been adjudged a bankrupt. Instead of the usual sale of property by the trustee there is substituted a sale to the debtor at an appraised value, which is not necessarily the current market value, or a retention of the property by the debtor under the moratorium clause, paying an annual rental and with the privilege of purchase. Under existing agricultural conditions, farm property would probably bring much less than its fair value at a forced sale, so that the new procedure is a reasonable regulation for the protection of both debtor and creditors and is within the constitutional power of Congress to legislate on the subject of bankruptcies." Gilbert's Collier on Bankruptcy, (3d Ed.) 1348.

If we read all of subsection (s) together with Section 75 and with the Bankruptcy Act, it is clear that subsection (s), and paragraphs 1 and 2 thereunder, apply to paragraph 7, and that the secured creditors do not lose their liens, and that the unsecured creditors have a general lien on all of the bankrupt's property, save and except his exemptions. In regard to deficiencies to secured creditors, they have the same rights under this section as they had before, under the Bankruptcy Act. They have not been disturbed. More than given in this Act no creditor, secured or unsecured, can get, and more than that he is not entitled to.

Since paragraph 3 was amended by the Committee on the Judiciary of the House, and paragraph 7 added at the committee's request, there is some ambiguity in the language of the Act, but that ambiguity is a question of construction, and not of constitutionality, and the lower courts, with rare exception, have found no difficulty in construing the Act, and carrying out the intent of Congress.

Paragraph 3 of subsection (s) provides that at the request of the debtor, and with the consent of the lienholder or lienholders, the trustee, after the debtor's exemptions have been set aside, shall agree to sell to the debtor any part or parcel or all of the remainder of the bankrupt's estate at the appraised value, upon the terms and conditions therein set forth. It is true that if any secured creditor does not consent to these terms and conditions, that then he will automatically come under paragraph 7. Yet if the provisions of paragraph 3 are reasonable and constitutional, there can be no great objection to paragraph 7, because that is an option given to him in addition to paragraph 3. He need not go under paragraph 7. He can give his consent, or withhold his objection, and then paragraph 3 will control, which we submit is constitutional, and more than reasonable and fair to the creditor.

We come now to paragraph 7. It provides that if any secured creditor of the debtor affected by the Act shall file written objections, then the court, after having set aside the debtor's exemptions, shall stay all proceedings for a period of five years, during which the debtor shall remain in possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession, and that the first payment is to be made within six months. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property, or upon request of any lienholder on real estate, the court shall cause a reappraisal, and the lienholder has his choice, whether he wishes to accept the first or the reappraised price.

Under this paragraph, the court has complete control of the property. It can protect the property from waste. It can charge such rent as is reasonable, and as will protect the creditor, and if the debtor does not comply with

those provisions, the court may order the trustee to sell the property in accordance with the Bankruptcy Act. For a more detailed analysis of paragraph 7, see Judge Parker's opinion in the appendix of this brief, page 15.

Nothing New.

There is no provision in the Frazier-Lemke amendment that the bankruptcy courts of this nation have not already made use of in some cases. The courts have allowed going concerns to continue in business under trustees—they have permitted the payment of indebtedness of such concerns on the installment plan, with or without interest. They have scaled down indebtedness to less than the value of the property, through composition, and they have given extension of time in which payments were to be made, and this at times against the wishes of the minority; and what can be done to a minority can be done to a majority, or to all, and still be constitutional. They have sold encumbered and unencumbered property for cash, or on time. Referees in bankruptcy have sold encumbered and unencumbered property at public and at private sale, at 75% of the appraised value without the approval of the court, and at less than 75% with the approval of the court. The Act here in question prohibits the sale for less than a hundred per cent of the appraised value. Courts have authorized sales to the mortgagee, or to the mortgagor, or to strangers, at private sale and at public sale. All that the Frazier-Lemke amendment does is to make this discretion mandatory, and that is not unconstitutional, although it may be new when this principle is extended to agriculture, the same as it has been practiced and extended by the courts to industry. Gilbert's Collier on Bankruptcy (3d Ed.) 1257, Sec. 1536.

Has Lienholder Right to Bid.

The question has been asked whether a mortgagee or a lienholder had an inherent right to have the property sold at public auction, and a right to bid. Our answer is that he has not. It has been suggested that the secured creditor owned the property which he holds as security. That is not an accurate statement. He does not own the property. It belongs to the debtor. The lienholder or creditor has merely a lien upon the property as security for the payment of the debt. In nearly every State in the Union the mortgagee or lienholder is entitled *not* to the specific property, but to the *proceeds* when same is sold under judicial process. *The Constitution does not require the distribution of the debtor's assets among his creditors.* The creditor has a right to the value of the property to satisfy his security, and that is what he gets under the Frazier-Lemke amendment.

The fact that the lienholder has been permitted to bid, under the rules of a court sitting in equity, is no reason that Congress cannot stop the practice in a bankruptcy proceeding. Under the common law, he never had such a right, and he was not allowed to bid. In England, any party to a proceeding in chancery who desired to bid applied to the court, and obtained leave to do so. Bidding without such leave was generally improper, because the conduct of the proceedings was usually given to some of the parties, and the bidding by any without leave of the court was somewhat analogous to bidding by the officer conducting the sale. (Note 136 A. S. R. 818.)

But in this country, there is no disqualification against a party to the proceeding becoming a bidder, and being accepted as a purchaser. For in as much as a sale made by a special master, under the direction of a court of chancery, is not made by either of the parties to the liti-

gation, or under his direction, but by the court, at such public judicial sale either party as a rule may bid without leave given by the court (*Pewabic Mining Co.* v. *Mason*, 145 U. S. 343; 16 R. C. L. 106, sec. 7716).

The fact that courts in chancery or sitting in equity have permitted mortgagees to bid without leave, while in England such leave was necessary, does not justify the conclusion that in this country they have an inherent right to bid; at least not when the Congress of the United States, legislating under the powers granted it by the Constitution, in connection with the depression, and for the good of the public welfare, sees fit to withdraw that privilege. Congress has a right, and it is its duty, to follow precedent only so far as it throws light upon what ought to be; and that is what has been done in this case. Courts in equity, neither in England nor in America, ever recognized an inherent right in a mortgagee or lienholder in any specific property. His lien may be for the full value, more than the full value, or less than the full value. The fact that the secured creditor, for self-serving purposes, offers to bid the full amount of his lien, and to bid more than the value of the property in order to maliciously deprive the debtor of the benefits of this act, surely will not be looked upon with favor by any court. *He has no such right.*

What If Bankrupt Fails to Purchase.

It has been intimated that the secured creditor may be injured under the provisions of paragraph 7 of subsection (s), if farm values continue to drop, and the land becomes worth less than the appraisal within the five years, and the debtor should refuse to purchase it. Our answer is, that if farm values are going down, they would go down just the same whether the creditor or the debtor has pos-

session of the property, and that the loss would be sustained just the same.

Of course, no law works 100% perfection. Such a law never was passed, and never will be passed. Why should we demand all of these exactions just because we extend to agriculture the same privileges that we extended to railroads under section 77, and to private corporations under section 77b, and to municipalities under section 78? These Acts must be construed together, and must stand or fall together We are confident they will all stand together.

Conclusion.

In construing an act of Congress in relation to the Constitution, the Court must be guided by the reason for, the object and the purpose of, the Act. Section 75 of the Bankruptcy Act will expire within 3½ years. For that reason, it can be classed as temporary and emergency legislation.

When Congress passed Sections 75, including subsection (s), 77 and 77b, and 78, it had a situation, and not a theory to deal with. This nation was confronted by a crisis, and is still confronted by a crisis. There were then some twelve million people out of employment, millions on Federal and State relief, and millions more in want. In many sections, the farmers organized and had recourse to the law of self-preservation, the first law of nature, and actually prohibited foreclosure sales. Officers of the law refused, in some cases, to hold foreclosure sales. State courts, in some instances, told mortgagees that they did not come into a court of equity with clean hands, and that it was not equity to deprive a large number of people of their homes during a crisis. There was no way in which agriculture or business could be refinanced, and there is none today. There are still some twenty or twenty-five million people on Federal relief, and on a disguised dole system. Monthly Report, F. E. R. A.

Congress was not limited to the restriction that a court is, in ascertaining these facts. It has a far wider latitude in the collection and finding of facts than courts, and for that reason, courts always have upheld the acts of Congress, unless they were clearly unreasonable and unwarranted. During the argument, it was asked how the Court could pass upon these questions as a matter of law. That is not necessary. Congress passed upon them as a matter of discretion, and the Court, under our form of Government, is not justified in setting aside that discretion unless it is arbitrary, and unreasonable.

McCulloch v. *Maryland*, 4 Wheat. 316; *Fairbank* v. *U. S.*, 181 U. S. 283.

At the time this legislation was enacted, numerous states were, and some still are, passing moratoriums. That is shown in the record. We call the Court's attention to page 60, appendix B of Petitioner's Brief, in which is given a summary of state mortgage moratorium laws, and there the Court will find a list of 26 States that passed moratorium laws.

Under subsection (s) the farmers who are insolvent or who are in distress and unable to meet their obligations, as they become due, and *therefore bankrupt within the meaning of the Constitution*, will be able to protect and conserve their homes, and their property, and scale down their indebtedness to the fair and reasonable values of such property and pay for same in accordance with the provisions of the amendment.

This amendment is a conservation act. Nobody loses anything—it conserves property and values. The creditors will get the present value of the property—that is all they could get before this amendment or that they are entitled to. In fact they will get more under this amendment than they ever

would get by wrecking another million farm homes and destroying all values. The agricultural wealth of this nation can and will be preserved in the hands of those who created it—the farmers.

Counsel for the bank quote from the Congressional Record, to show that some members were opposed to this Act. They forget, however, that some members who talked against the Act on the grounds that they thought it was unconstitutional were convinced, after the constitutional questions were presented, that they were in error, and have voted for the bill. Counsel also fail to tell us that the same Congressional Record shows that this amendment was passed, after being thoroughly debated, by a standing vote of 113 to 16 in the House and by a roll call vote of 66 to 16 in the Senate. *This vote was the most eloquent part of the debate—it was the climax.* There is, however, plenty of comment on the part of the 113 in the House and the 66 in the Senate in favor of this amendment in the Congressional Record. But we shall not take the Court's time by citing these remarks. *Congress acted and gave its mandate by an overwhelming majority and that mandate is constitutional and is for the best interest of the public. That mandate is humane and it is just to all.* Congressional Record, June 18, 1934, page 12382.

The amendments, Sections 75, 77, 77b and 78, mark a new epoch—from now on the debtor is going to be considered as well as the creditor. The Bankruptcy Act is going to become an act of conservation, and not an act of wreckage. Property and wealth will be conserved in the hands of those who created it—not destroyed. Debtors will be given a reasonable opportunity to make good. There will be some difficulties and perhaps some miscarriage of justice—no law is perfect. Society as a whole will protect itself against unreasonable creditor individuals and corporations. Rea-

sonable creditors will be helped, but the nation as a whole has to carry the burdens of the mistakes of the past and look forward to the future with hope and aspirations for a future that will be just to all.

Respectfully submitted,

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APPENDIX.

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

No. 3778.

WILLIAM W. BRADFORD, JR., Bankrupt,

Appellant,

versus

MICHAEL W. FAHEY, Assignee; JOHN D. WORTHINGTON, ANNIE McC. WORTHINGTON and THE POTOMAC JOINT STOCK LAND BANK OF ALEXANDRIA,

Appellees.

On Appeal to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the District of Maryland, at Baltimore.

No. 3797.

WILLIAM W. BRADFORD, JR., Bankrupt,

Appellant,

versus

MICHAEL W. FAHEY, Assignee; JOHN D. WORTHINGTON, and ANNIE McC. WORTHINGTON, His Wife,

Appellees.

Appeal from the District Court of the United States for the District of Maryland, at Baltimore.

Argued January 8, 1935. Decided April 2, 1935.

Before Parker, Northcott and Soper, Circuit Judges.

Morton P. Fisher and Allan H. Fisher (A. Freeborn Brown on brief) for Appellant, and Wade B. Hampton and Clarence E. Martin (Robinson and Fahey on brief)

for Appellees Michael W. Fahey, Assignee, and The Potomac Joint Stock Land Bank of Alexandria; Herbert Levy (Morris Rosenberg on brief) for Appellees John D. Worthington and Annie McC. Worthington, his wife; and Edwin A. Krauthoff as *amicus curiæ*.

PARKER, Circuit Judge:

This is an appeal in bankruptcy proceedings from an order denying the prayer of a petition, which was filed under sub-section (s) of Section 75 of the Bankruptcy Act, and which asked that the court enjoin further prosecution of proceedings which had been commenced in the Circuit Court of Harford County, Maryland, to foreclose a mortgage on the farm of petitioner. The mortgagee resisted the petition on two grounds: (1) that the court of bankruptcy could not interfere with the state court's jurisdiction, which had attached in the proceedings to foreclose the mortgage; and (2) that subsection (s) (7) of Section 75 of the Bankruptcy Act was unconstitutional and therefore furnished no basis upon which the ultimate relief sought might be granted. The District Judge held against the mortgagee on the first ground, but sustained the second and denied the petition because in his opinion the sub-section of the Bankruptcy Act under which the petition was filed was violative of the "due process" clause of the Fifth Amendment. The petitioner has appealed.

There is no dispute as to the facts, which may be briefly stated as follows: On February 6, 1926, the petitioner William W. Bradford, Jr., a farmer of Harford County, Maryland, executed a mortgage on 145 acres of land to the Potomac Joint Stock Land Bank of Alexandria to secure a debt of $20,000. On April 16, 1934, there was due on the mortgage debt a balance of amortization payments in excess of $1,000 and certain insurance premiums which the mortgagee had advanced; and on that date the mortgagee, acting under the terms of the mortgage, declared the whole debt, amounting to $19,497.23, to be due, and assigned the mortgage to Michael W. Fahey for the purpose of foreclosure. Fahey proceeded to advertise and sell the mort-

gaged property under the power contained in the mortgage, docketing the foreclosure proceedings in the Circuit Court of Harford County, Maryland, in accordance with the provisions of the Maryland law. The sale was held on June 18, 1934, when John D. Worthington and wife became the last and highest bidders for the property at the price of $21,500 and deposited $2,150 with the assignee to be applied on the purchase price. On June 19th, Fahey reported the sale to the Clerk of the Court, and the usual order *nisi* was entered requiring notice to be given that the sale would be confirmed unless cause to the contrary should be shown on or before the 19th day of July. Exceptions to the sale were filed by the petitioner Bradford, but these have not been passed on because of the proceedings taken in this cause.

On July 17th, two days before the order *nisi* was returnable, Bradford filed his petition in the court below under Section 75 of the Bankruptcy Act, alleging that he was a farmer, that he was unable to meet his debts as they matured and that he desired to effect a composition or extension of his debts as provided by that section. The proceedings in the state court were stayed pursuant to the prayer of the petition, and the case was set for hearing on September 6th. In the meantime answers were filed by Fahey and the Worthingtons and the land bank was made a party. Letters were sent to the various creditors offering a composition, but on the morning of the hearing petitioner was notified that his offer would be refused by the land bank, and, as the debt owing to it was more than the other indebtedness of petitioner, there resulted a failure to obtain such an acceptance of the offer of composition as was required by the section. Petitioner thereupon amended his petition and asked to be adjudicated a bankrupt and granted relief pursuant to sub-section (s) of the section and that the foreclosure proceedings in the state court be permanently enjoined. At this time it was formally and definitely stated by counsel for petitioner that he would elect to purchase the property embraced in the land bank's mortgage pursuant to the terms prescribed in sub-section (s) and by counsel for the mortgagee that it did and would object

thereto. The court approved the petition as properly filed and passed an order adjudicating Bradford a bankrupt, but, being of opinion that paragraph 7 of sub-section (s) was unconstitutional, refused to stay proceedings in the state court. The matter complained of on this appeal is this refusal to stay proceedings.

A preliminary question which arises is whether the appeal is not premature, as the right of petitioner to relief under paragraph 7 of sub-section (s) of the act would arise only after there had been an appraisal of the property, an offer to purchase at the appraised price and a refusal on the part of the lienholder to accept this offer. But the answer to this is that the appeal is from the refusal to stay proceedings in the state court, and under the provisions of the act, if valid, these proceedings should be stayed while the appraisal and other proceedings preliminary to the right to relief under paragraph 7 are going forward, if the court has jurisdiction to stay such proceedings. Sub-section (s) is not an independent statute but an amendment to Section 75 as enacted by the Act of March 3, 1933. Under subsections (n) and (o) of that section, the property of the farmer wherever situate is subjected to the exclusive jurisdiction of the court of bankruptcy, and it is forbidden that proceedings for foreclosure of a mortgage thereon be instituted or maintained in any other court without the permission of the court of bankruptcy. Proceedings under sub-section (s) are but a continuation of proceedings theretofore instituted under other provisions of the section; and the provisions for staying foreclosure in a state court are clearly applicable for the purpose of protecting the court's jurisdiction while such proceedings are going forward. A denial of the stay on the ground that paragraph 7 of sub-section (s) was unconstitutional, after a petition had been filed asking relief under that sub-section, was clearly appealable, therefore, irrespective of whether or not the proceedings had gone forward to the point where petitioner was entitled to the relief provided by that paragraph.

With this preliminary question out of the way, three questions are raised for our consideration by the appeal, viz: (1) whether sub-section (s) of Section 75 of the Bank-

ruptcy Act, and particularly paragraph 7 thereof, is a constitutional exercise of the bankruptcy power of Congress; (2) whether a court of bankruptcy has jurisdiction under Section 75 of the Bankruptcy Act to stay proceedings for foreclosure of a mortgage already pending in a state court where relief is asked under sub-section (s) of the section; and (3) whether this jurisdiction may be exercised with respect to a foreclosure suit in Maryland, where there has been a sale of the mortgaged property under order of court but the sale has not been confirmed. We think that all of these questions must be answered in the affirmative.

The bankruptcy power of Congress is conferred by Art. 1, Sec. 8, Clause 4 of the Constitution, which provides that Congress shall have power "to establish . . . . uniform laws on the subject of bankruptcies throughout the United States". It is correlative to the clause of Art. 1; Sec. 10 which provides that "no state shall . . . . pass any . . . law impairing the obligation of contracts." It was realized at the time of the adoption of the Constitution that uniform laws on the subject of bankruptcies were important in the development of interstate and foreign commerce, over which Congress was given control; and not only was Congress vested with the power to establish such uniform laws, but the states were expressly forbidden to exercise the power usually involved in bankruptcy laws, i. e., the power of impairing the obligation of contracts. The subject is dealt with in one sentence in that great commentary on the Constitution, the Federalist Papers (XLI), where it is said: "The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie, or be removed into different states, that the expediency of it seems not likely to be drawn in question."

What is a law on the subject of bankruptcies within the meaning of the Constitution has never received exact definition at the hands of the Supreme Court, but there can be no question, we think, but that the constitutional grant vests in Congress full power to deal with the relationship existing between debtors unable or unwilling to pay their

debts and their creditors, and that we may safely say, without attempted to delimit the power, that any law must be held to be a law on the subject of bankruptcies, which provides for the surrender of the property of a debtor to a court, its control and administration by the court with the eventual application of the property or its value to the claims of creditors, and the discharge of the debtor from the remainder of his debts. As we said in the recent case of *Campbell* v. *Alleghany Corporation* (C. C. A. 4th) — Fed. (2d) —, which dealt with the validity of the corporate reorganization section of the Bankruptcy Act, "all phases of the relationship between a debtor financially embarrassed and his creditors are brought under the control of Congress by the constitutional grant of power; and the fact that a particular mode has hitherto been employed in dealing with this relationship is not to be taken as a measure of the power over it. *Hanover Nat. Bank* v. *Moyses*, 186 U. S. 181; *Sturges* v. *Crowninshield*, 4 Wheat. 122; *In re Landquist* (C. C. A. 7th), 70 Fed. (2d) 929; *In re Klein*, Fed. Cas. No. 7865, reported as note to *Nelson* v. *Carland*, 1 How. 265, 277; *In re Reiman*, 7 Ben. 455, Fed. Cas. No. 11,673; *Kunzler* v. *Kohaus*, 5 Hill 317."

In *Story on the Constitution*, Sec. 1113, quoted with approval by Judge, later Mr. Justice, Blatchford, in *In re Reiman, supra*, it is said: "Perhaps as satisfactory a description of a bankrupt law as can be framed is that it is a law for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts. And a law on the subject of bankruptcies, in the sense of the Constitution, is a law making provisions for cases of persons failing to pay their debts."

And Judge Blatchford in his opinion in the case cited defines the "subject of bankruptcies" as used in the constitutional grant of power as follows: "What is 'the subject of bankruptcies?' It is not, properly, anything less than the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief. It comprises the satisfaction of the debt for a sum less than its amount, with the relief of the debtor from liability for the unpaid balance, and the right

of the creditor to require that the amount paid in satisfaction shall be substantially as great a pro rata share of the property possessed by the debtor as it can pay, or can reasonably be expected to pay."

It is clear that the power of Congress over bankruptcies is not limited by the terms of the British and colonial statutes as they existed at the time of the adoption of the Consitution. As was well said by Mr. Justice Hunt, in affirming the decree of Judge Blatchford in the *Reiman* case (Fed. Cas. 11,675): "The argument, that the subject of bankruptcies is to be interpreted and limited by the British and colonial statutes, as they existed at the time of the separation of this country from Great Britain, is quite too narrow. No country can afford to be thus cut off from all possible improvement in its legislation. Whatever relates to the subject of bankruptcy is within the jurisdiction of Congress; and, to say that the law as existing at the time of the Revolution, or the adoption of the Constitution, shall furnish the rule and limitation of legislation, would take a large part of the subject out of their jurisdiction. While it is true that all proper bankrupt laws and insolvent laws are based upon the theory of a surrender of the bankrupt's property, none of them require such surrender to be entire and absolute." See also opinion of the Supreme Court in *Hanover Nat. Bank* v. *Moyses, supra,* and opinion of this Court in *Campbell* v. *Alleghany Corporation, supra.*

Nor are the limits of the bankruptcy power to be sought in the exercise which Congress has made of that power. Congress made no exercise of the bankruptcy power whatever until 1800, when an act along the line of the English bankruptcy acts relating to traders was passed, which was repealed, however, in 1803. The power was again exercised by the passage of an act in 1841, but this act was repealed in 1843. In 1867 the third bankruptcy act was passed; and it remained in force for only eleven years, being repealed in 1878. In 1898 the present bankruptcy act was passed. It has been well described (1 *Remington on Bankruptcy* p. 18) as: "A system of laws for the taking possession of the assets of an insolvent, either upon his own initiative or, in case he has done certain acts called acts of bankruptcy, considered to demonstrate his unworthiness or incapacity

properly to continue his business, upon the initiative of his creditors; for recovering such of his assets as have been transferred fraudulently to third parties or unfairly to particular preferred creditors or have been seized by creditors while the debtor was insolvent; for selling the assets and distributing the proceeds equitably amongst his creditors; and finally for granting to him, in case he has surrendered all his assets and disclosed to his creditors in bankruptcy the truth about his business, a discharge from the unpaid deficit of his debts." But not even the act of 1898 fully covered the subject of bankruptcy. It made no adequate provision for extension of time to insolvents, for corporate reorganization, for relief of embarrassed railroad corporations or for relief of agricultual debtors. It was designed primarily for the relief of those whose debts had been incurred in mercantile and manufacturing pursuits and their creditors; and only in this field did it afford relief which could be said to be adequate.

In 1933, however, a much wider exercise of the bankruptcy power on the part of Congress became imperative. The period of industrial expansion which followed the world war witnessed an unprecedented expansion of credit througout the country. Bonds were issued by both public and private corporations in amounts far beyond any ability on their part to pay in normal times, and private individuals borrowed on real estate mortgages to an extent that had never before been thought possible. This period of prosperity and expansion of credit had been followed by an economic depresssion world wide in scope, property values had dwindled to a mere fraction of what they had been, and the national income had shrunk to the extent that the payment even of the interest on this vast volume of indebtedness was out of the question. Relief was needed in the form of bankruptcy laws, which would enable the people to face reality with respect to the altered condition of their debt structure and would enable business to go forward unhampered by obligations which were impossible of fulfillment. Congress accordingly passed the amendment of March 3, 1933, to the Bankruptcy Act, 47 Stat. 1467. This amendment added four sections to the act: Section 74, which provided for compositions and extensions by distressed

debtors without an adjudication of bankruptcy; Section 75, which provided a special plan for the relief of agricultural debtors; Section 76, which granted relief to persons secondarily liable on obligations of distressed debtors; and Section 77, which provided for the reorganization of insolvent railroads. Sections 74 and 77, as thus enacted, have been sustained, as a valid exercise of the bankruptcy power. *In re Landquist* (C. C. A. 7th) 70 Fed. (2d) 929; *In re Chicago R. I. & P. R. Co.* (C. C. A. 7th) 72 Fed. (2d) 443.

It was soon apparent, however, that the amendments of 1933 did not adequately meet the situation. Something was needed which would enable insolvent corporations and farmers to obtain relief from their debt burdens without forcing a sale of their property, and, in the case of farmers, without putting them off of the land which they had been cultivating to join the army of the destitute and unemployed. Congress accordingly, on June 7, 1934, passed the Corporate Reorganization Act, as Section 77b of the Bankruptcy Act, and on June 28, 1934, passed the Frazier-Lemke Act adding sub-section (s) to Section 75 of the Bankruptcy Act. Both of these acts provide relief in bankruptcy for embarrassed debtors and their creditors under the supervision of the court without requiring a sale of the property of the debtor. We have recently passed the Corporate Reorganization Act and have held it valid. *Campbell v. Alleghany Corporation, supra.*

Both Section 75 as originally enacted and the Frazier-Lemke Act, adding sub-section (s) thereto, are emergency legislation, enacted to meet the conditions brought about by the economic depression. Sub-section (c) of Section 75 limits the time within which petitions may be filed thereunder to five years, and the provisions of sub-section (s), the Frazier-Lemke Act, are applicable only to debts existing at the time of its passage. As originally enacted the section provided merely for extensions and compositions for agricultural debtors, when accepted by a majority in number and amount of the claims against them, and when approved by the court as for the best interest of all creditors and as including an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the

farmer. See sub-sections (g) and (i). Compositions and extensions thereunder did not "reduce the amount of nor impair the lien of any secured creditors" but affected "only the time and method of its liquidation". Sub-section (k). There can be no question but that under the principles discussed by us in *Campbell* v. *Alleghany Corporation, supra,* the section as originally enacted was valid.

Sub-section (s), added by the Frazier-Lemke Act, provides for cases where a farmer who has filed a petition under Section 75 has failed to obtain the acceptance by creditors of an extension or composition proposal offered, or who may feel aggrieved by the composition or extension as finally approved. Such farmer is authorized to amend his petition or answer so as to ask that he be adjudged a bankrupt. Provision is then made, under paragraphs (1) to (6) of the sub-section, for the valuation of his property by appraisers, subject to review by the court, and for the purchase by him of all or any part of the property at the valuations so fixed, upon making payments which are spread over a period of six years. As the right of the farmer to purchase the property under these sections is dependent upon the consent of lienholders, and as the lienholder here has not given such consent, the validity of these purchase provisions is not before us. Upon the principles hereafter discussed, however, we see no reason to doubt their validity. Where a secured creditor objects to the sale to the farmer in accordance with these provisions, however, provision is made under paragraph (7) that proceedings be stayed, that the farmer have the right to retain possession of the property for five years upon paying a reasonable annual rental to be fixed by the court, and that he have the right to purchase the property at any time within the five years upon paying the appraised price of the property, with the right on the part of the lienholder to demand a reappraisal of the property and payment of the amount thereof in lieu of the amount of the original appraisal, if it is acceptable to him. Paragraph (1) of the sub-section relating to appraisal of the property of the bankrupt and paragraph (7), upon which the rights of the petitioner here depend are as follows:

"(1) Upon such a request being made in the petition or answer, at the time of the first hearing, appraisers shall be designated and appointed. Such appraisers shall appraise all the property of the debtor at its then fair and reasonable value, not necessarily the market value at the time of such appraisal. The appraisals shall be made in all other respects, with right of objections, exceptions, and appeal, in accordance with this Act: *Provided,* That in case of real estate either party may file objections, exceptions, and appeals within one year from date of order approving the appraisal."

"(7) If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as herein provided for, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into Court the appraised price of the property of which he retains possession: *Provided,* That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: *Provided, however,* That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective."

As the paragraphs which we have quoted are amendments of the general bankruptcy law, it is clear that the

appraisals for which provision is made are to be conducted as are other appraisals in bankruptcy under the supervision and approval of the court, with the added safeguard that, in the case of real estate, objections, exceptions and appeals may be filed within one year of the order approving the appraisal. The price at which the farmer may purchase the property, therefore, is not some arbitrary figure arrived at by friendly appraisers, as has been argued, but the fair and reasonable value of the property as determined by the court in a judicial proceeding after notice and hearing. The appraisal is to be made of the property "at its then fair and reasonable value, not necessarily the market value at the time of such appraisal." Congress doubtless realized that, as a result of the economic depression, much valuable farm property had little or no market value at the time, and that it would be unfair to creditors to value the property on the basis of its then market value. In arriving at its fair and reasonable value, the appraisers and the court were authorized to take into consideration all the circumstances bearing upon value, not merely the market value at the time of the appraisal, just as a public service commission may consider such circumstances in valuing property for rate making purposes. The cost of the property, the cost of improvements made upon it, its depreciation, its productive capacity, reproduction cost or the cost of acquiring like property, the history of values in the immediate locality—all of these and other like matters, as well as market value, would be proper subjects of consideration in determining fair and reasonable value. The rule prescribed is eminently fair to creditors, as it is hardly conceivable that a court would approve an appraisal as a fair and reasonable value which was less than market value. And the danger that the farmer might avail himself of the provisions of the act to speculate upon the chances of a rise in the value of the property without obligating himself to purchase it, is obviated by the provision which allows the lienholder to demand a reappraisal. If the farmer elects to purchase, he must pay either the original appraisal or this reappraisal, whichever is higher.

It is of course no ground of constitutional objection that the section here in question relates only to farmers; for it is well settled that the uniformity prescribed by the Constitution is "geographical and not personal" and that bankruptcy legislation need not apply to all classes of persons in the same way. *Hanover Nat. Bank* v. *Moyses, supra,* 186 U. S. 181, 188; *Stellwagen* v. *Clum,* 245 U. S. 605, 613; *Leidigh Carriage Co.* v. *Stengel* (C. C. A. 6th) 95 Fed. 637; *In re California Pac. Ry. Co.,* 3 Sawyer 240, Fed. Cas. No. 2,315; *Campbell* v. *Alleghany Corporation, supra.* And it does not furnish ground of objection that secured debts are affected, or that property which has been mortgaged by the bankrupt is to be administered by the bankruptcy court. Under the bankruptcy law as it existed prior to the recent amendments the court in ordering the sale of the bankrupt's property free of liens administers his encumbered property, as well as that which is unencumbered. See *Van Huffel* v. *Harkelrode,* 284 U. S. 225, 227; *Federal Land Bank of Baltimore* v. *Kurtz* (C. C. A. 4th) 70 Fed. (2d) 46; *Allebach* v. *Thomas* (C. C. A. 4th) 16 Fed. (2d) 853. "A secured debt or lien is, so far as the Constitution of the United States is concerned, a no more sacred kind of property than an unsecured debt, • • • and the Constitution expressly permits and grants to Congress the power to affect such property, whether it be an unsecured debt or whether it be a lien, by laws relating to the subject of bankruptcies." *In re Burgh,* 7 Fed. Supp. 184, 185; *Campbell* v. *Alleghany Corporation, supra.*

The case, then, comes to this: Whether the act is to be condemned as not being in fact a law on the subject of bankruptcies or as denying the due process guaranteed by the Fifth Amendment, either because it permits the farmer to purchase the encumbered property at the valuation fixed by the court instead of requiring that it be sold at public auction, with right on the part of the lienholder to bid at the sale, or because it permits a delay of five years, during which the proprty is to be rented to the farmer, before requiring that the value as determined by the court be collected and distributed to lienholders and other creditors.

There can be little doubt as to the law being a law on the subject of bankruptcies within the meaning of those words as used in the Constitution. It applies only to farmers who are unable to pay their debts and ask to be adjudged bankrupt. It requires the surrender of their property into the control of the court of bankruptcy. It provides for the valuation of this property and that such valuation be paid to creditors. It grants to the bankrupt a discharge from his debts. That the property of the bankrupt is to be operated under the direction of the court until such time as it can be disposed of to advantage is, of course, not inconsistent with the purposes of a bankruptcy act; and there is nothing in the nature of bankruptcy which requires that the debtor's property be actually sold and the proceeds thereof distributed among creditors. If the creditors receive the value of the property, they have received all to which they are reasonably entitled. The corporate reorganization act rests on this basis; and there is no reason why Congress should not apply the same principles to the relief of insolvent farmers. See discussion of this question as applied to corporate reorganization in *Campbell* v. *Alleghany Corporation, supra.*

Of course, a bankruptcy law must not offend against the due process clause of the Fifth Amendment, which is a limitation upon all of the powers conferred by the people upon the Federal Government. *Hanover Nat. Bank* v. *Moyses, supra.* But as any exercise of the bankruptcy power impairs the obligation of contracts, such impairment is not to be taken as in itself a denial of due process. For the provisions of the act to violate the amendment, they must be so grossly arbitrary and unreasonable as to be "incompatible with fundamental law"; and, when consideration is given to the situation which confronted Congress at the time of the passage of the act, we do not think that its provisions can be said to violate this rule. The situation, which still continues in large measure, was that agriculture throughout the United States was prostrate and despairing. A huge volume of debt, estimated at between eight and ten billions of dollars, had been piled up by the farmers in the period of expansion, and this was represented in large part

by mortgages on land. As a result of the decline in the prices of agricultural products, the farmers were without means to pay even the interest on this huge volume of debt, and there was default throughout the country on agricultural mortgages. Foreclosures on an unprecedented scale were imminent; but such foreclosures, while fraught with ruin to the farmer debtors, would not have resulted in payment of the debts, as land had so declined in value that only in rare instances could it be sold for anything like the amount of the debt against it. To have permitted these foreclosures to proceed would have meant the purchasing of the land by the lienholders, the eviction of owners who were settled on the land and a great increase in tenant farming. It was in the public interest that the farmer be kept on his farm, that, if possible, his interest as an owner of the farm be maintained, and that its value as a going concern be preserved.

It was to meet this emergency situation that the statute in question was enacted. The interests of the creditor were protected by having the property valued under the direction and subject to the approval of the court, and by providing that the creditor should ultimately receive this valuation. The farmer was kept on the farm and its value as a going concern was preserved by providing that it should be rented to the owner at a rental to be fixed by the court, and that he should have the right to purchase it at the fair and reasonable value which the court should determine.

The operation of mortgaged property under the control of the court is, of course, nothing new. It is a common thing for foreclosure proceeding to be delayed while the court operates the property of debtor corporations for the purpose of preserving its going concern value in the interest of stockholders as well as creditors until a sale can be advantageously made; and it should not be held "so grossly arbitrary and unreasonable as to be incompatible with fundamental law" that Congress, when faced with a great economic emergency, has prescribed for the relief of agricultural debtors and their creditors, a procedure which involves the operation of agricultural property under the supervision of the court to the end that its value may be

preserved in the interest of all parties concerned. The fact that the court is to rent the property, instead of operating it through a receiver, is a difference of detail in management and not a difference in principle.

And the right accorded the farmer to purchase at the valuation fixed by the court, is no more than the right accorded the debtor under the corporate reorganization act which we have upheld. If the creditor receives the value of the property, it is no concern of his who the purchaser may be; and as we have seen, the act provides for the determination of value by the court in a judicial proceeding in which the creditor is given full opportunity to be heard.

As a matter of fact, no property in any real sense is taken from the lienholder by reason of the provisions of the act. The mortgaged property has already shrunk in value before the proceedings under the act are instituted; and the proceedings merely scale down the secured portion of the debt to the value of the encumbered property and transfer the lien of the encumbrance to the proceeds of that property when paid into court. While the lienholder is delayed in getting his money, the delay is probably not for so long a time, or the loss so great, as would result to him if the act were not passed and wholesale foreclosures of real estate mortgages should result. While generally regarded as a measure for the relief of farmer debtors, it is clear that the act is at the same time one in the interest of their creditors also; for creditors of farmers would have nothing to gain, even with respect to the collection of their debts, from the financial debacle which would result from the wholesale foreclosure of farm mortgages, in which their collateral would be rendered practically worthless. In this connection, it may not be amiss to consider the closing paragraphs of the report of the Senate Judiciary Committee, reporting on the act. (Report No. 1215, 73rd Congress, 2d Session.) They are as follows:

"In short, all that this amendment does is to carry out the purpose of section 75 and adjust and scale down existing farm indebtedness to the present value of his property, and it gives the debtor farmer an opportunity to save his home and maintain his property by paying for it on the

installment plan while the property remains under the control of the court. Section 75 itself is an emergency act and has only about 3½ years to run. Therefore this amendment will cease to exist when the time limit of section 75 expires.

"This amendment will make it possible for the Federal Farm Credit Administration, through the Federal land banks, to function by adjusting and scaling down the indebtedness to somewhere within the reasonable value of the property. This amendment in no way affects existing liens or encumbrances except that it scales them down to the present value of the encumbered property, and then transfers the lien or liens to the proceeds of that property when paid into court.

"On the average, under its provisions, the lienholders and creditors of the debtor farmer, on a whole, will receive unquestionably larger returns than under the present system where the property is thrown upon the market and sold at public auction. It gives a reasonable time and gives the original owner an opportunity to protect his property, and therefore his home."

If the states, as has been held in *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, may in times of emergency exercise their police power to grant a moratorium against the foreclosure of mortgages, notwithstanding the limitations of the contract clause of the Constitution, then certainly Congress, which has been given express power upon the subject of bankruptcies, may exercise that power in the enactment of bankruptcy laws designed to meet the emergency, even though the exercise may delay the collection of the debts due by the bankrupt. As has been often said, the bankruptcy power, like the other powers granted to the federal government, is plenary. It is to be used, as are the other granted powers, to "promote the general welfare". And in times of emergency it should be exercised, reasonably of course and in the spirit of the Constitution, but in a way, if possible, to meet the problems of the emergency. As said by the Chief Justice in the Blaisdell case: "While emergency does not create power, emergency may furnish the occasion for the exercise of power. 'Al-

though an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.' *Wilson* v. *New*, 243 U. S. 332, 348. The constitutional question presented in the light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions."

The most serious question presented is as to the five year delay which the statute interposes to the rights of the creditor. It may be conceded that under ordinary conditions, this provision would be so arbitrary and unreasonable as to offend against the provisions of the Fifth Amendment; but we are not prepared to say that it may be so condemned when viewed in the light of the emergency which confronted Congress. Whether after the economic depression shall have passed and conditions shall have returned to normal the act can be sustained, is a question which is not before us; but the law is well settled that "it is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends." *Home Building & Loan Association* v. *Blaisdell, supra*, 290 U. S. 398, 442; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 547, 548.

The act in question has been upheld as constitutional by the Circuit Court of Appeals of the Sixth Circuit in *Louisville Joint Stock Land Bank* v. *Radford* (C. C. A. 6th) — Fed. (2d) —; by Judge Dawson in the same case in the District Court 8 Fed. Supp. 489; by Judge Symes in *In re Cope*, 8 Fed. Supp. 778; and by Judge Atwell in *Paine* v. *Capitol Freehold Land Co.*, 8 Fed. Supp. 500.

We come then to the question as to whether the court of bankruptcy had jurisdiction to stay proceedings for foreclosure of a mortgage already pending in a state court; and it is clear that prior to the enactment of the amendment of March 3, 1933, it had no such power. *Straton* v. *New*, 283 U. S. 318; *In re Hurlock*, 23 Fed. (2d) 500. This was because the jurisdiction of the state court and the bankruptcy court in matters of foreclosure was concurrent, and on principles of comity the bankruptcy court would not attempt to interfere with the jurisdiction of the state court. Under sub-section (n) of Section 75, however, the bank-

ruptcy court was given exclusive jurisdiction over the property of the farmer debtor; and under sub-section (o) it was expressly provided that proceedings for the foreclosure of mortgages should not be instituted, or, if instituted prior to the filing of the petition, should not be maintained. Under such circumstances there can be no question but that the jurisdiction of the bankruptcy court over the property was paramount and exclusive, and that it was the duty of the court to protect this jurisdiction by injunction or other appropriate process. In such case the power of the court is analogous to that which it possesses where the property of the bankrupt is in possession of the receiver of a state court appointed within four months of the filing of the petition in bankruptcy. See *In re Watts*, 190 U. S. 1; *Bailey* v. *Blackmon* (C. C. A. 4th), 14 Fed. (2d) 16, 19, 20; *Gamble* v. *Daniel* (C. C. A. 8th), 39 Fed. (2d) 447; *Miller* v. *Potts* (C. C. A. 6th), 26 Fed. (2d) 851.

It is argued that the power of the court of bankruptcy to stay proceedings ended with the rejection of the proposition for composition or extension submitted under Section 75 as originally enacted. This, however, fails to take account of the fact that sub-section (s), the Frazier-Lemke Act, is a mere addition to Section 75 of the Bankruptcy Act, and that the procedure provided for thereunder is merely a continuation of the procedure which must be begun under other subsections of Section 75. For the court to afford the relief which the section as amended contemplates, it is necessary that the exclusive and paramount jurisdiction of the court over the property of the bankrupt be maintained; and there can be no question but that the provisions of sub-sections (n) and (o) apply as well to proceedings continued under sub-section (s) as to proceedings under the other provisions of Section 75.

And we do not think that the right to stay proceedings in the state court is precluded because a sale has taken place in foreclosure proceedings if there has been no confirmation of the sale. Of course, where the property of the bankrupt has finally passed from him under a foreclosure proceeding, the bankruptcy court has no power over it; for the bankruptcy court is given jurisdiction only over property of the

bankrupt, and, when he has ceased to have an interest in the property as the result of foreclosure, no basis exists for a stay of proceedings under the act. *In re Arend*, 8 Fed. Supp. 211, 212; *In re Klein*, 9 Fed. Supp. 57, 59; *In re Stacy*, 9 Fed. Supp. 61; *In re Smith*, 7 Fed. Supp. 863. Under the law of Maryland, however, the defendant in foreclosure does not lose his interest in the property sold at foreclosure sale until the same is confirmed and the purchase money paid. It is provided by the Maryland Code (Art. 66, Sec. 11) that "all such sales when confirmed by the court and the purchase money is paid, shall pass all the title which the mortgagor had in the said mortgaged premises at the time of the recording of the mortgage." Until confirmation and payment of the purchase money, the property is still in the mortgagor and the only interest acquired by the purchaser is the right to receive a conveyance upon complying with the terms of sale if the sale be confirmed. In the latest case dealing with the subject, *Mizen* v. *Thomas*, 156 Md. 313, — Atl. —, the Court of Appeals of Maryland said:

"It is true that, where in such a case as this the trustee reports a sale which in due course is finally ratified, the transaction is spoken of as a sale, and for many purposes it may be treated as a sale, and no mischief is occasioned by that use of the word. *Miller's Equity Proc.*, sec. 512. But strictly speaking it is not a sale, for a sale of real estate is not complete or consummate until the property has been actually conveyed, or at least until the purchaser has so far complied with the terms of sale as to entitle him to a conveyance. The bid of the purchaser, its acceptance, the report of the trustee, and its final ratification by the court, are all successive steps in the formation and completion of a perfect and binding contract of sale, but do not amount in themselves to an actual sale. Nor can the property be treated as actually sold until the terms of sale have been met or waived, and the purchaser has received or is entitled to receive a conveyance thereof. For until then the title to the property is still in the mortgagor, and the only interest acquired by the purchaser is the right to receive a conveyance of the property upon complying with the terms of sale."

While there are some expressions to the contrary in the opinion in *Union Trust Co.* v. *Biggs*, 153 Md. 50, 137 Atl. 509, that case merely decided that a judgment against the defendant in foreclosure, rendered after the sale but before its confirmation, did not constitute a lien upon the property sold; and it is to be interpreted, in our opinion, as relating the effect of the confirmation to the date of the sale, rather than as changing the well settled rule as to the effect of judicial sales on the rights of the parties prior to confirmation. See *Whiteley* v. *Whiteley*, 117 Md. 538, 544; *Loft Inc.* v. *Seymore*, 148 Md. 638, 645. But at all events, the decision in *Mizen* v. *Thomas, supra*, is the latest expression of the Maryland court and we accept it as laying down the rule now in force in that state.

As the bankrupt had not lost his rights in the mortgaged property as a result of the unconfirmed foreclosure sale, we think that the foreclosure proceedings should have been stayed. The statute is highly remedial in character and should be liberally construed. The evident purpose of Congress was to grant to farmer debtors the relief which it prescribes in all cases where an interest in their property remained in them at the time of the filing of petitions under the act. See *Paine* v. *Capitol Freehold & Land Co.*, 8 Fed. Supp. 500; *In re Lawmon*, 8 Fed. Supp. 886; *In re Cope*, 8 Fed. Supp. 961; *In re Mines*, 9 Fed. Supp. 1; *In re Duffy*, 9 Fed. Supp. 166. As said by Judge Lindley in the case last cited:

> "Viewing the bankruptcy amendmentin connection with the remaining sections of the Bankruptcy Act and the recent amendments thereto, it seems to me evident that Congress intended to reach every kind of property interest or property right which the bankrupt then had, including rights to redeem; that Congress intended that the bankrupt should have an opportunity to preserve the then existing status of foreclosure or other insolvency proceedings until it can be determined whether any rehabilitation is impossible. This does not mean that Congress has said that mortgages shall not be enforced. It does not mean that liberty of contracts shall be interfered with or property

confiscated, but it does mean that the court, within its jurisdiction and within the limits announced by the Supreme Court in the recent case of *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A. L. R. 1481, will preserve the existing status of property rights of the bankrupt until convinced that no good purpose is being served by so doing."

For the reason stated, we think the learned judge below erred in denying the prayer of the petition for stay of proceedings in the state court. The order appealed from will accordingly be reversed and the case will be remanded for further proceedings not inconsistent with this opinion. As appeal to superintend and revise under Section 24 (b) of the Bankruptcy Act is the proper method of review, the order appealed from will be reversed in No. 3778 and the appeal in No. 3797 will be dismissed.

In No. 3778 Reversed.

In No. 3797 Appeal Dismissed.

A CHRISTMAS SALUTE TO AMERICA

O America, cleft by ages—by continents, seas, and skies,
As far from that Birth in Asia, as far as the fire-drake flies;—
Yet have you read the Story writ in God's Advent there!
Yet may you share the Glory that Asia could not share!
First-born of any Nation the pages of History count
To dare in your legislation The Sermon on the Mount!
Even though greed's gier-eagle contend with your Eagle Blue;
Though selfish interest inveigle, and the mercenary mew;—
Stand, though the foe refutes you! Advance, though the fools debar!
The Son of God salutes you under His Christmas Star.

—Robert Nelson Spencer.

Christmas, 1933.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 717.

LOUISVILLE JOINT STOCK LAND BANK,
PETITIONER,

vs.

WILLIAM W. RADFORD, SR., RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

ADDITIONAL BRIEF FOR RESPONDENT.

The brief of the petitioner reached the counsel for the respondent on March 28, 1934. At that time, the original brief of the counsel for respondent who are filing this brief had been prepared. This additional brief is intended as an answer to the numerous and diverse contentions of the counsel for the petitioner, many of which are inaccurate in point of fact, and only two of which are true in point of law.

Two legal propositions are correctly stated by counsel for the petitioner:

(1) The Frazier-Lemke Act, to be valid, must not deprive the petitioner of its property without due process of law;

(2) It must likewise be a uniform law upon the subject of bankruptcies.

The issue in this case is clearly drawn in paragraph two, page 2, of the brief for the petitioner:

> "Whether a mortgagee is entitled to have the mortgaged property applied to the payment of his claim."

Using language accurately, from the standpoint of legal understanding, a mortgagee was never so *entitled*, as a fundamental right or otherwise. Originally, centuries ago, a mortgage was an instrument whereby the title to the property passed so absolutely to the mortgagee that in the absence of a stipulation to the contrary in the mortgage, the mortgagee was entitled to the immediate possession of the mortgaged property. If on the law day, that is the day for the payment of the debt which the mortgage was executed to secure, the debt was not paid in the precise manner specified in the mortgage, the "gage", that is, the property pledged, became dead or "mort" in the mortgagor, the title to the land became absolutely vested in the mortgagee, and the debt became likewise "mort" or extinct.

In that state of the law, a chancellor, himself an ecclesiastic, who had evidently delivered a sermon on the text (Psalms 111:9) "He sent redemption unto his people", discovered the doctrine known as the equity of redemption. Under this doctrine, the mortgagor was entitled to

redeem from an instrument executed by him, in direct contradiction of the language of the instrument itself and despite the existence of Magna Charta.

Under this doctrine as originally announced, the mortgagee had no legal rights whatever, except as the statute of limitations may have barred the equitable right of redemption. In those circumstances, "humbly complaining" and "in the name of God and conscience", as the old precedents read, the holder of the mortgage asked the chancellor, as an act of grace and not of right, to give to the mortgagee "such relief as in equity and good conscience, might seem meet and proper."

In those days, no one could in advance advise a chancellor just what relief the chancellor would or would not grant. The chancellor, as a matter of grace and not of right, extended such relief as in his understanding of conscience and equity, seemed meet.

We are reminded that Solomon (I Kings 8:59) prayed that God "maintain the cause of his servant and the cause of His people Israel at all times, as the matter shall require."

So it has always been the glory of the jurisprudence known as equity that the relief granted by the chancellor was adapted to the facts and circumstances of the case before the Court.

This Court is also reminded that the application of the Fifth Amendment is governed by the facts with respect to which the Court is pronouncing judgment. A statute may offend against the Amendment in one state of facts and may be immune from attack in another state of facts.

Indeed in bankruptcy, the first statute on the subject (34 and 35, Henry VIII, ch. 4, anno 1542), did not require in all cases a sale of the assets of the bankrupt. After authorizing a sale, the statute of Henry VIII continued:

> "or otherwise to order the same for true satisfaction and payment of the said creditors."
>
> 1 Remington on Bankruptcy (4th Ed.), page 6.

So that at all times, for several centuries, the right of a mortgagee may be defined as a right to apply to a Court for leave to foreclose the equity of redemption under a decree of the Court, or to sell the property described in the mortgage in such manner as the law permitted.

In effect, a mortgagee may be assimilated to a dealer in intoxicating liquors. Neither such a dealer nor a mortgagee foreclosing an equity of redemption are engaged in the enjoyment of a natural or inherent right. Both are exercising rights dependent upon the law for their existence; hence, subject to regulation.

For instance, a mortgagee:

(1) May not insert in a mortgage a provision waiving the equity of redemption.

(2) Where, as in Missouri, a deed of trust may be foreclosed by sale without a foreclosure in Court, the sale must be had in the form prescribed by statute.

(3) In many states, a mortgage may be foreclosed only by an action in the nature of a suit in equity.

(4) A Court, in a decree of foreclosure, may require the payment of an upset price.

(5) In some states, a sale may not be confirmed unless a certain portion of the appraised value is bid.

(6) In some states, unless a certain portion of the appraised value is bid, a period of redemption is allowed the mortgagor.

(7) In many states, a period of redemption from a sale under mortgage is allowed as a right; in others, as an act of grace.

(8) In foreclosing mortgages on public utilities, certain claims are allowed as preferential.

(9) In confirming sale of properties under mortgages, Courts pass on, approve, disappro[illegible] or modify plans of reorganization.

The newspaper account of the argument of the case intimated that Mr. Justice BRANDEIS seemed to be of the opinion, that under the Frazier-Lemke Act, the mortgagee not only lost his security, but also a right to bid therefor and to receive the proceeds of a sale.

This account of the hearing is not accurate. Nor does the mortgagee lose his security. If a farmer does not pay for the farm, in the manner permitted by the act, then the property is sold and the mortgage is paid out of the proceeds. If the farmer does pay for the farm, the mortgagee receives the proceeds of the payment.

As to the intimation of Mr. Justice BRANDEIS that a person who in no event could become the successful purchaser would not likely bid for the property, this may be admitted, but the farmer does not obtain the right to buy his former possession by being the highest, or perhaps

the only bidder. He pays the value of the farm fixed by a judicial decree.

As to a mortgagee being deprived of the asserted right to extinguish the title of a farmer "to his possession", (Lev. 25:13) the answer is: Under a law on the subject of bankruptcies, it is respectfully submitted that Congress in the absence of the Fifth Amendment, could have exercised its plenary, unlimited and paramount power by entirely cancelling the mortgage, including all its incidents. So, applying the test of reasonableness and the requirement that an Act of Congress must not be arbitrary, the proceeding at bar resolves itself into this proposition:

May an individual debtor be granted by way of exemption, in the enactment by Congress a uniform law on the subject of bankruptcies, the exclusive privilege of purchasing the property in which he has an equitable right of redemption, at the higher of two valuations fixed by a judicial decree rendered upon the hearing of evidence?

To answer this question in the negative, is to convert individual owners of real estate into tenants, and to say that while a corporation may reorganize its affairs in such a way as to give the bondholders, general creditors and stockholders in the old company an interest in the new company, a like result may not obtain in the case of an individual.

As to a mortgagee bidding on the property on which he has a lien:

Let us begin with a minority bondholder or bondholders in the case of a corporation. What right has he, as a practical proposition, to bid at a sale of the security for his debt? In such cases, the reorganization mana-

gers are usually the only bidders. The test of the fairness of the bid is not the bid itself, but the fairness of the plan of reorganization.

Again, in case of compositions, dissenting creditors are compelled against their will to accept the composition. In such cases, it is submitted the rights of the minority cannot, as a matter of law, be controlled by the will of the majority, but that the consent of the majority is merely evidential in its nature and a restraint upon a power which otherwise would be unlimited, the power of the court to make an equitable disposition of the assets of a debtor.

As to cancelling the unpaid portion of a secured debt. this result arises from the operation of the general bankruptcy law heretofore declared valid (186 U. S. 186).

It must be recalled that under Section 77, the validity of which is recognized in the Rock Island cases, decided by this Court, April 1, 1935, it is provided as to dissenting creditors (subdivision g, clause 6), adequate protection shall be provided "for the realization by them of *the value* of their securities, liens and claims" in one of three ways. One of these prescribed ways is (Sub. (g), par. 6, clause (c)), "by appraisal and payment in cash of either the value of such liens or claims or • • • the value of the securities allotted by the plan."

Mr. Chief Justice HUGHES called the attention of Mr. Lemke to the statement in paragraph 7, that the court "shall stay all proceedings for a period of five years." The words "all proceedings" must necessarily mean the proceedings with respect to the property of which the debtor retains possession under the terms of the Act.

A law must be construed sensibly and reasonably, to accomplish its purpose, and in the light of its spirit and intent.

As applied to the case at bar, the Court stayed all proceedings only with respect to the retained property (Rec., p. 80). As to the property not retained by Radford and not set apart as exempt, that property is immediately subject to sale and the proceeds thereof to distribution.

As to the five-year period, answering the question propounded by Mr. Justice SUTHERLAND:

Under the Minnesota Mortgage Moratorium Case, the District of Columbia Rent Cases and the Maryland Frazier-Lemke Case (4 C. C. A., In re Bradford, April 2, 1935), whenever the emergency of which the operation of the Frazier-Lemke Act is predicated no longer exists, the enforcement of the period ends.

And if Radford fails to pay the prescribed rent, as and when it falls due, then, according to the Act, "the court may order the trustee to sell the property * * *," which of course ends the moratorium.

As to whether or not a flat reduction of fifty per centum in the outstanding indebtedness of farmers may be upheld as a law on the subject of bankruptcies, a question asked by Mr. Justice SUTHERLAND, the theory of the dissent in the Gold Cases is that the Act therein held valid scaled all debts forty per cent. of their value, hence void. But under the doctrine of the Court in the Gold Cases, absent the Fifth Amendment, or on proof of reasonableness of such action, Congress might abolish all forms of debt entirely by a uniform law on the subject of bankruptcies.

Mr. Justice STONE was concerned with respect to that portion of the secured debt not represented by the value of the security. The Frazier-Lemke Act is an amendment of Section 75, National Bankruptcy Law, hence is a part of Section 75. Section 75 is an amendment of the law as a whole, hence a part of the law.

Turning to Section 57 (h), National Bankruptcy Law, we find a rule stated for the proof of secured claims. The value of the security is to be determined by "agreement, arbitration, compromise or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance."

So that, in the case at bar, the value of the security held by the lienholder is presently valued at $4,445, a general claim is now allowable for the balance, and on this balance, a dividend is immediately payable to be derived from a sale of the non-exempt and unencumbered property. The unpaid deficiency on such general claim is dischargeable in bankruptcy, just as unnumbered billions of such debts have been discharged since 1898 by operation of the general law on the subject of bankruptcies, or wiped out by the statute of limitations or the death of insolvent debtors.

Mr. Justice BUTLER inquired as to exempt property. In the case at bar, no realty was set apart as exempt to the debtor (Rec., p. 73). Certain personalty was set apart as exempt under the general bankruptcy law. A non-exempt balance of personalty was appraised (Rec., pp. 87, 88), also one-half acre of unencumbered real estate. But no disposition was made of such non-exempt unencumbered property; hence no question with respect thereto arises in this Court.

Mr. Justice McReynolds inquired as to the facts of this case. In a nut-shell:

(1) Radford in 1922 owned a farm valued in 1922 at $18,000 and in 1934, at $4,445.

(2) Radford executed two mortgages on which he failed to make the payments due in 1932 and thereafter.

(3) Absent the Frazier-Lemke Act, the lienholder, by reason of the statutes of Kentucky, would have been entitled to purchase Radford's farm at a foreclosure of the mortgage. Radford could have discharged the unpaid balance of his debt by filing a petition in voluntary bankruptcy and thereafter becoming a recipient of relief granted at public expense.

Neither the sale nor the rental value of the farm would have been increased by the process described. On the contrary, adding one more farm to the number now owned by the bank which it is compelled to rent to tenant farmers or is actively endeavoring to sell below the market value and at bargain prices, would not restore agricultural economic prosperity, but rather operate in the opposite direction.

What does the Frazier-Lemke Act accomplish, as applied to the facts of this case, and of which complaint is made:

(a) Radford, in effect, is granted a moratorium of six months, in each biennial period for five years. That is on December 1, 1934, the rental "for the first year for said property of which he retains possession" was fixed at $325, "and the payment of said rental shall be made to the trustee of the bankrupt on or before the first of May, 1935" (Rec., p. 82).

So at the end of six months, Radford is to pay one year's rental, that is, for six months last past, and six months in advance.

Radford, at any time within five years of December 1, 1934, may pay for his farm at $4,445, subject to the right of the lienholder to have the property revalued and to be paid the higher of the two values fixed by the court.

What is the net result of all this?

(a) If Radford does reacquire the title to the farm at a value fixed by the Court, and the farm thereafter increases in value, Radford will benefit thereby.

(b) If on the contrary, the lienholder buys the property at a foreclosure sale at a price approved by the court in confirming the sale, and the property thereafter increases in value, the lienholder will benefit thereby.

Congress put the man above the dollar, human welfare above corporate so-called prosperity.

"No man can serve two masters * * * Ye cannot serve God and mammon." (Consult Lev. 25; Deut. 151, 1; Micah 4:4):

"Choose ye this day whom ye will serve."

CLASSIFICATION.

Counsel for the lienholder complain in their brief that the Frazier-Lemke Act applies to "absentee-landlords." This was done to stabilize the value of farm property. Congress may classify the persons to whom a law on the subject of bankruptcies may apply (186 U. S. 186).

AMBIGUITIES.

A law cannot be held unconstitutional because it is ambiguious. To be unconstitutional, it must have a meaning, and that meaning must offend constitutional requirements.

But as applied to the procedure had in the case at bar, no ambiguity is pointed out nor reliance placed thereon.

AGGRIEVED DEBTOR.

Certainly a debtor, cannot within the meaning of subdivision (p) claim to be "aggrieved" by "the composition or extension" which he has offered and which has been accepted by the requisite number of creditors. But Radford did not change his mind, he did not repudiate a composition or extension previously made; he failed to obtain the consent of his creditors to an extension or composition (Rec., p. 13). See statement of lienholder, Rec., pp. 48, 49.

REFINANCING OF RADFORD.

Lienholder's claim that Radford did not refinance his mortgage is open to at least three essential defects:

(a) No showing is made that he might have borrowed any specific amount.

(b) No showing is made that the lienholder would have accepted in payment of its debt, what Radford might have borrowed.

(c) Radford was entitled to the debt reduction which he may enjoy by reason of the Frazier-Lemke Act, without continuing to carry a burden of debt beyond his ability to discharge.

DEED FROM RADFORD.

Counsel claim that Radford agreed to convey his farm to the lienholder in satisfaction of the mortgage debt. No relief was asked in the lower court predicated of such alleged agreement. No effort was made to specifically enforce such agreement. On the contrary, the bank accepted Radford's refusal to execute the deed as ending the alleged contract and in derogation of its alleged contract, proceeded to foreclose his mortgage.

RADFORD'S VALUATION.

Counsel for the lienholder note a coincidence:

(a) The appraisers valued the land at $4,445.

(b) The schedules of Radford fixed the value of the land at $4,450.

But what of it?

Lienholders introduced no evidence of the value of the land, although an opportunity to do so was afforded it (Rec., p. 99).

If lienholder contends a secret understanding existed between the appraisers and the debtor as to the valuation to be placed on the land. That issue should have been raised in an appropriate manner and testimony offered in support thereof.

The brief of Radford's counsel referred to by counsel for lienholder (Brief, p. 6, note), referred to an allegation in the original answer of the lienholder and thereafter eliminated by amendment. This brief is not preserved in the record before this Court.

VALUE OF PROPERTY.

Counsel for the lienholder state that "the appraisers fixed the value of the mortgaged property at $4,445." This valuation was identical as to the fair and reasonable value, as well as to the market value (Rec. p. 87).

BANK'S OFFER TO BUY.

The statement of counsel for the lienholder claim: "The Bank in open Court offered to pay $9,205.09 in cash for the property, mortgaged to it." Here is the crux of the case:

(a) Farmers are indebted beyond their ability to pay.

(b) Farms are mortgaged beyond their value.

(3) If lienholders have a constitutional right to bid the full amount of their debt and thus acquire the farms of the country, only one remedy remains: To refinance the farmer through governmental aid involving an inflation of currency and/or an increase of the public debt.

(4) What was the substance of the bid made by the bank? A bankruptcy court is a court of equity, and equity looks to substance, not to form. The cash to be paid in by the bank, "the aggregate of which sums is the amount of its mortgage debt * * *" (Rec. p. 72).

The record shows that all money paid in by the mortgagee would immediately have been returned to it "in satisfaction of its mortgage debt, if such offer be accepted" (Rec. p. 72).

Hence, the bank's offer to buy is a mere gesture designed to nullify the law; hence properly discarded as irrelevant.

STAY OF PROCEEDINGS.

Counsel for the lienholder object to the provisions (Rec. p. 80): "All proceedings • • • for the enforcement of any lien against the following described property be and the same are hereby stayed" (Rec., p. 80; brief, p. 7).

Lienholder cannot object if proceedings instituted by it are stayed, provided the law be valid; certainly cannot complain if others are likewise enjoined.

COSTS OF ADMINISTRATION.

Counsel for lienholder say that of the rental to be paid ($325): "administration expenses are to be deducted, leaving little of anything, to the Bank in the form of a cash rental payment."

The "administration expenses" of which this complaint is made, amount to $22.75, one per cent. to the referee and six per cent. to the trustee (Bankruptcy Law, Sections 40, 48).

The Circuit Court of Appeals did, as is contended by lienholder (Brief, p. 8), rule "that Congress could compel a secured creditor to accept an appraised value of the mortgaged property while permitting the debtor to keep such property, free and clear of the lien," but

(a) Such "appraised value" is necessarily subject to the approval of the court, upon evidence to be offered by the interested parties and the debtor, in order to "keep such property, free and clear of the lien" must pay such value so fixed as aforesaid.

WHAT IS A LAW ON THE "SUBJECT OF BANKRUPTCIES"?

In view of the decision of this Court in the Rock Island Cases (April 1, 1935) and of 4 C. C. A., In re Bradford

(the Maryland Case, April 2, 1935), and of the cases cited in the original brief for respondent, little more can be said.

"Distribution" as an element in a law on the subject of bankruptcies looms large in the consciousness of counsel for lienholder.

But the lienholder is not asking for "distribution"; it is asking for a debt to be paid in full to the exclusion of all others, and then in the course of its brief, clamors twenty-one times for "distribution".

As to the contention: "If it be that concentrated in the Federal government is the power to control every situation involving non-paying creditors, then the commercial life of each State is subject in large measure to Federal regulation:

(a) Such is the lament of Judge Wells (In re Klein, Fed. Cas. No. ....., overruled; In re Klein, Fed. Cas. .....).

(b) "Concentrated in the Federal government is the power to control every situation involving non-paying creditors" WHO HAVE BEEN ADJUDCATED BANKRUPT.

(c) No one claims that "Congress could divest State courts of jurisdiction over suits upon promissory notes between citizens of the same states" as to debtors not adjudicated a bankrupt, but such power does extent to suits against persons adjudicated a bankrupt.

National Bankruptcy Law, Section .....

(d) No one contends, ordinarily speaking, that "crimes such as the obtaining of goods or credits by false pretenses could be defined as crimes against the United States without regard to the powers reserved under the Tenth Amendment to the several states," but if such crimes are committed in contemplation of bankruptcy, a different result obtains.

(e) As to whether or not, "the lines between State and Federal governments could be largely redrawn," that is a continuous process and a never-failing subject of controversy, too large to be handled here.

UNITED STATES V. FOX.

On the theory of putting the best foot forward, counsel have thrice selected United States v. Fox, 95 U. S. 670, as their leading authority. (Note comment, Judge Simons.)

But in the Fox case, an important exception to the doctrine therein noted must not be overlooked. "An act" • • • cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress." So that an act having relation to the violation of the Bankruptcy Laws can be made an offense against the United States.

PRIOR STATE OF THE LAW.

Congress certainly is not limited to the prior state of the law on any subject within its jurisdiction.

Consult, The Rock Island Cases; The Bradford (Maryland Case, 4 C. C. A., April 2, 1935, opinion, 6 C. C. A., Rec., pp. 115 et seq.); Judge Dawson, Rec., pp. 52 et seq.; Judge Symes (In re Cope); Judge Otis (Brief, Respondent, pp. .....); In re Landquist (7 C. C. A.), 70 Fed. (2d) 929, 932, 933.

"SCALING DOWN DEBTS."

How can a bankruptcy law which permits a debtor to scale down his debts be invalid on that account?

In Hanover National Bank v. Noyses, 186 U. S. 186, Noyses owed debts in excess of his assets. He was held entitled to plead his discharge from a debt on which no dividend had been paid.

Senate Document No. 65, 72 Congress (1st Session) "The Report of the Attorney-General on Bankruptcy Law and Practice" is fairly overwhelming as to statistics of debts scaled down.

A country overburdened with debts must scale down or go bankrupt without hope of recovery.

GIVING PROPERTY TO DEBTORS.

Counsel for lienholder claim that Frazier-Lemke Act:

(a) "Is specifically directed against mortgagees and other secured creditors";

(b) "And was enacted for the very purpose of depriving them of the collateral for which they had bargained"; and

(c) "Of giving it to the farmer-debtor."

Specification (a) of this claim may be admitted. Congress was dealing with the subject matter therein described. Unsecured creditors, as a class were content to wait until agriculture had recovered. Secured creditors were foreclosing mortgages. Hence the necessity of protecting against the class described in the specification now under consideration. Congress in the enactment of

a uniform law on the subject of bankruptcies may specify the extent of the operation of such a law. (186 U. S. 186). For example, Section 3, specifies the persons against whom petitions may be filed. Consult Section 4. Section 8 relates to bankrupts who have died or have become insane. Section 17 is specifically directed against debts not discharged in bankruptcy. Section 29 is specifically directed against persons who commit offences. Section 60 is specifically directed against preferred creditors. Section 67 is specifically directed against certain liens declared invalid.

As to specification (b): An act which gives to a secured creditor the value of his collateral does not deprive him thereof. Nor does an act which requires a farmer debtor to pay the reasonable value of his farm in order to regain it, "give" such farm to the farmer debtor.

As to the remarks of Congressman Truax, brief page 15, in the original brief of respondent are collated the several speeches made in Congress prior to the passage of the act. If this court is going to sit in judgment on "the Congressional temper", it is respectfully requested that all of this literature be consulted.

The contention of counsel for lienholder that by reason of the appraisal of the farm at $4,445, the indebtedness of Radford "to the Land Bank was automatically scaled down to that sum," is not accurate.

(a) The Frazier-Lemke Act does not of itself scale down any indebtedness at all. So far as that act is concerned, a debtor by repurchasing his farm at the value fixed by the court, does not reduce his indebtedness in any amount. As to that share of the debt not represented by the value of the farm, the lienholder becomes a

general creditor of the bankrupt with a right to share in the distribution of the non-exempt unencumbered assets of the debtor. (Sec. 57 g, Nat. Bank. Law.) The scaling down only results from the fact that Radford may apply for his discharge under the general bankruptcy law.

As to the Land Bank being "compelled to accept such $4,445 in lieu of its $9,000 mortgage, with accumulated interest and charges," such is the natural incident of all proceedings in bankruptcy where the value of the assets is not sufficient to pay the debts in full. At the foot of its brief (page 16) petitioner refers again to the "cost of administration" without stating the amount thereof, $3.25 to the referee Sec. 40) and $19.50 to the trustee (Sec. 48).

TAXES, INTEREST AND INSURANCE.

As a result of the adjudication in bankruptcy, the title to Radford's farm passed from him to his trustee in bankruptcy (Sec. 70). In as much as under the Frazier-Lemke Act, Radford was required to pay "a reasonable rental annually for that part of the property of which he retains possession," it may fairly be said that Radford became a tenant of the trustee in bankruptcy. Certainly a tenant who pays a reasonable rental cannot be expected in addition thereto to pay taxes, insurance, interest or repairs. $220 is approximately five per cent. of $4,445 over and above the taxes on the land.

We are again told (brief p. 16) "the Land Bank was enjoined for five years, to wit until December 1, 1939, from enforcing its lien by the sale of the mortgaged property or otherwise; while Radford was expressly allowed to keep all his assets." This statement is quite as inaccurate as the general tenor of the brief for the petitioner. (a) As to the period of five years, this depends

on whether or not Radford pays the annual rental, subject to the right of the court to annually fix the amount of such rental subject to the continuance of the emergency of the existence of which the statutory moratorium is predicated.

(b) Radford was not expressly allowed to "keep" all his assets. The title to the assets passed to the trustee in bankruptcy. Radford became a tenant of part of them, the continuance of his tenancy being dependent on his paying annually the prescribed rental. His reacquisition of the title to his former assets was dependent upon his paying the reasonable value thereof as fixed by the court. Part of Radford's assets was set apart to him as exempt under the laws of Kentucky. The remainder of his assets are immediately subject to sale and distribution.

As to the statement (brief, p. 17): "Radford was given the opportunity to acquire at any time within five years, full ownership of the mortgaged property free of the lien," this statement partakes of that defect which seems to be congenital to the brief of the petitioner, that of inaccuracy. Radford does not have five years in which to acquire the property. To obtain that privilege he must pay the annual rental, for otherwise as provided at the end of paragraph 7 of sub-section s, of Sec. 75: "the court may order the trustee to sell the property as provided in this act." Radford could not acquire the title to the farm except by paying the reasonable value thereof as fixed by the court, an essential qualification of the statement made by counsel for the petitioner. The court has the right to terminate the five-year period at any time that its continuance migh be deemed unreasonable.

RADFORD'S OPTION.

In the brief of the counsel for the petitioner, considerable stress is placed upon the contention that Radford is granted an option to repurchase his farm of which he is at liberty to avail himself, if he so desires, or to refuse to take over the farm if he is of that opinion.

Primarily, in view of the plenary nature of Congress, it is entirely permissible for Congress to give Radford this option, provided such action on the part of Congress is deemed reasonable.

But examining the Frazier-Lemke Act in its entirety it will be seen that Radford is not given an option to repurchase his farm. Under the act, Radford is required "at the time of the first hearing" to petition the court "that he be allowed to retain possession of any part or parcel or all of the remainder of his property and pay for same under the terms and conditions set forth in this sub-section" (s).

Radford filed a petition of this nature, Record, p. 67.

The next step required by the act is outlined in paragraph 2 of sub-section (s) of Section 75. The steps outlined in this paragraph were taken.

Paragraph 3 contemplates that "the trustee * * * shall agree to sell to the debtor any part, parcel or all of the remainder of the bankrupt estate."

Radford made a request that "the trustee in bankruptcy herein * * * agree to sell" to Radford the farm formerly owned by him.

All this contemplates an actual agreement to sell, not merely an option to purchase. This thought is em-

phasized in paragraph 4 which refers to "an agreement having been reached as provided in sub-section (3)."

Taking up paragraph 7 of the Frazier-Lemke Act, we find that paragraph 7 is based on paragraph 3: "if any secured creditor of the debtor affected thereby shall file written objections to the manner of payments and distribution of debtor's property, as herein provided for", etc.

It thus clearly appears that paragraph 7 under review in this case, neither contemplates an agreement to sell nor an option to purchase. Paragraph 7 relates exclusively "to the manner of payment and distribution of debtor's property". The agreement to sell is found in paragraphs 3 and 4. So that a debtor under the Frazier-Lemke Act is not given an option to purchase. He is required to enter into an agreement to purchase. Section 7 relates merely, as already stated, "to the manner of payments and distribution of debtor's property".

But all of this discussion by the counsel for the lienholder, as to whether or not Radford is given an option to purchase or is required to enter into a contract or agreement to purchase is entirely immaterial. Radford owes the mortgage debt until he is discharged in bankruptcy. If he pays the debt he certainly pays for the property. If he fails to pay the debt and fails to get a discharge in bankruptcy, he remains indebted to the lienholder in an amount in excess of the purchase price. If circumstances entitle him to be discharged of the mortgage debt, he is certainly entitled to be discharged of any obligation to repurchase the property.

It is entirely possible that a debtor under Section 75 might acquire property which came to him after he filed his petition and that he might be discharged from the

debts that he owed when he filed the petition and retain his after-acquired property. Such a result obtains, however, from the operation of the general bankruptcy law, not from the Frazier-Lemke Act. It is also possible to conceive a state of facts under which a debtor might file a petition under Section 75 might thereafter acquire other property and at a still later date enter into an agreement to repurchase his farm. In that event the property which he acquired between the date of the petition and the date of the agreement to purchase might be liable for the obligation created by such agreement. But such a contingency is quite remote. It is impossible for a lawmaker to anticipate and provide for every circumstance that may arise. Progress is born of experience and every Act of Congress is subject to amendment and unfoldment. A law which does not provide for every circumstance that may arise is not for that reason void. But, in the case at bar, the essential fact remains that there is no evidence that Radford acquired any property between the date on which he filed his petition and the date on which he elected to repurchase his farm.

Again, the situation may be viewed in another light: Suppose Radford filed a petition as a debtor as he did, and then entered into an agreement to purchase the farm and thereupon filed a second petition as a debtor; under the second petition, he could get a discharge from all of his debts, including his obligation to repurchase the farm.

Complaint is made that Radford might be able to repurchase his property "at less than half of the mortgage debt". Suppose the Bank took over the land under a decree of foreclosure and sold the farm to another purchaser, the Bank could not expect to get the face amount of its debt for a farm valued at less than one-half of the debt.

As to the Land Bank being "deprived of its right of distribution measured as of the date of Radford's alleged bankruptcy" (brief, p. 17) this statement is somewhat difficult of comprehension.

(a) As to Radford's "alleged" bankruptcy, he was so adjudicated. No exception has been taken to that adjudication in the brief for the counsel for the petitioner.

(b) As to measuring the right of the Land Bank to a distribution as of the date of filing the petition in bankruptcy, an accurate understanding of the bankruptcy law discloses that, whether or not Radford repurchases his farm, the Land Bank here and now, as of the date of the filing of the petition in bankruptcy, is entitled to have allowed against the estate of Radford, a general claim for the difference between the value of its security and the amount of its debt, to have such of Radford's property which is non-exempt and unencumbered and of which he elects not to remain in possession to be sold, the proceeds distributed, and to receive a dividend on its general claim.

CONCLUSION.

Nothing in the brief for the counsel for the petitioner demands a reversal of the order of Judge Dawson, affirmed by United States Circuit Court of Appeals for the Sixth Circuit.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 717.

LOUISVILLE JOINT STOCK LAND BANK,

Petitioner,

vs.

WILLIAM W. RADFORD, SENIOR

Respondent.

SECOND ADDITIONAL BRIEF FOR RESPONDENT.

Statement.

In the first additional brief for respondent, an attempt was made to answer the brief for petitioner served on March 28, 1935. That task had not been finished when the time allowed for the preparation of that brief had expired. Further time having been given, the work thus interrupted is resumed.

BRIEF.

FIFTH AMENDMENT.

Counsel for the respondent, who is filing this brief, concede the operative force and effect of the Fifth Amendment, as construed by this Court and as applicable to the rights of the parties to this proceeding.

Counsel for petitioner entirely misapprehend the application of the Fifth Amendment to the proceeding before the Court.

The Fifth Amendment is not a missile to be thrown broadside into a legal structure in the hope of thereby demolishing it, nor is it a barrage with which to shell the terrain of pending litigation.

A person cannot avail himself of the Fifth Amendment which

(a) forbids that such person shall not be deprived of his property without due process of law, by

(b) claiming that at some future date, or in some circumstances not at issue in the proceeding at bar, such deprivation may take place as to some other person (262 U. S. 488).

In considering the application of the Fifth Amendment to a particular Act of Congress, it must be remembered the Court deals with what has been done in the instant case, not what may be done in some other case.

> "The criterion (in passing on an act challenged as invalid under the Fourteenth Amendment) is not the possibility of conceivable injury * * *" (219 U. S. 67).
>
> "Only such persons who are in some way prejudiced by an unconstitutional law can complain of it" (232 Mo. 65).
>
> "One who is not prejudiced by the enforcement of an Act of the Legislature cannot question [redacted] consti-

tutionality, or obtain a decision as to its invalidity on the ground that it impairs the rights of others" (6 Ruling Case Law, pp. 89, 90; see 87).

The due process clause does not impose an unobtainable standard of accuracy (234 U. S. 385, 395). One who would strike down a statute as unconstitutional must show "that the alleged unconstitutional feature injures him" (259 U. S. 123).

See also 71 Fed. (2d) 482.

What has happened to the Bank in this case up to date: Radford was granted the right to remain in possession of mortgaged property for five years by paying a reasonable annual rental fixed by the Court at a hearing at which the mortgagee was present and offered no evidence, though it had an opportunity to do so.

Only that, and nothing more.

Such action cannot be held unconstitutional (290 U. S. 388).

Tested by the foregoing, the claim of lienholder that because it may be allowed a general claim for the unsecured value of his debt, and thus decrease dividends to other creditors (Brief, p. 19), the Act is void, is not tenable.

THE FUNDAMENTAL LAW.

Counsel for the lienholder (Pet. Brief, p. 25), state: "It has always been the fundamental law of this country that a mortgagee had the right to receive the full proceeds (up to the amount of his debt), at a public sale of the property." The Constitution is generally regarded as the "fundamental law" of our country.

Mr. Justice Story defined a constitution as "a fundamental law or basis of government * * *" (12 Corpus Juris, p. 675, Sec. 1).

A "constitution is * * * the fundamental law of the land * * *" (39 South. 893).

"A 'constitution' is the written instrument by which the fundamental powers of the government are established * * *" (1 Words and Phrases (2d Ed.), p. 922).

Bouvier's Law Dictionary (Rawle's 3d Revision) defines a constitution as "the fundamental law of a state * * *"

"The fundamental law of a free country * * *" (3 Barb. (N. Y.) 198).

See also 2 Words & Phrases (1st Ed.), p. 1462, right hand column.

And wherein does the Federal Constitution, except in a proceeding in bankruptcy and as an incident thereof, govern the foreclosure of mortgages?

Do counsel by the fundamental law "mean the fundamental law of mortgages?" As of what date is this law to be ascertained? (Consult Deut. 15 I; Lev. 25.)

Do counsel mean a return to the "fundamental law" of mortgages under which there was no foreclosure, no redemption, no hope for the mortgagor, but only a present sale of the property, subject to a defeasance in case the debt was paid on the law day?

But Congress under the power to establish a uniform law on the subject of bankruptcies may displace a theretofore existing fundamental law. Otherwise, Hanover National Bank v. Moyses, 186 U. S. 186, would have been otherwise decided.

As to Workmen's Compensation Laws this Court has ruled: "* * * such statutes are not open to constitutional objection because they abrogate common law defenses * * *" (263 U. S. 422). See also 250 U. S. 423, 424.

"Novelty is not a constitutional objection * * *" (250 U. S. 419).

As to the article of Mr. Wehle, cited by the counsel for the lienholder (Pet. Brief, p. 25), the writer recognizes

that Section 77B implies a new theory of bankruptcy law. He says, *inter alia*: "* * * under it old rights can be destroyed and new ones created." The author admits:

> "With the advent of the multiple-bond mortgage upon great railroad property, it became difficult to maintain the unitary mortgagee's ancient alternative right to either cash proceeds of a fair sale or to the property itself."

Here is a frank confession that the alleged "ancient alternative right" of a unitary mortgagee, "to either cash proceeds of a fair sale or to the property itself," is not a constitutional guarantee.

A perusal of Mr. Weahle's article will disclose that the author is not condemning the theory of 77 B, but is showing a way in which the section can be made more efficient.

The whole proposition in the case at bar comes to this:

(a) Prior to enactment of National Bankruptcy Act, July 1, 1898, a mortgage holder in Kentucky, on bidding two-thirds of the appraised value of the property, was entitled to have the sale confirmed and a deed issued to him without redemption on the part of the mortgagor. This left the mortgagor indebted to the mortgagee, by way of a deficiency judgment, for one-third of the mortgage debt. The payment of this balance could be enforced against any non-exempt unencumbered property of the debtor. If not so paid, this deficiency judgment could be renewed, the interest compounding so long as the debtor was alive.

(b) On July 1, 1898, President McKinley approved National Bankruptcy Law. This law left the situation, hereinbefore outlined, unchanged with this exception: The debtor was entitled to apply for a discharge from

his debts. The validity of the Act of 1898 has been upheld (186 U. S. 186). This left the debtor in that situation described by counsel for the lienholder: Freed from his debts and also freed from his property, the debtor started again in the battle for existence, unencumbered by any belongings and unharrassed by any creditors.

(c) Subdivision (b) hereinbefore named was a great advance over subdivision (a), and was not achieved without a struggle.

(d) By the act approved June 28, 1934, the right of the creditor to a sale of the mortgaged property was postponed. It is true that the act fixes the period of postponement at five years. But under the doctrine of the Minnesota Mortgage Moratorium case (290 U. S. 398) the fact that the period is so fixed is immaterial. The Court will enforce the moratorium so long as the Court deems it reasonable and not arbitrary to do so. When the Court reaches the conclusion that its continued enforcement would be so unreasonable as to make it a deprivation of property without due process of law, the Court will decline to enforce the moratorium and it would be at an end.

(e) While the moratorium is in effect, the debtor pays a rental, the result of a judicial decree, at the hearing of which the lienholder had an opportunity to present evidence of such rental value. In the case at bar, the district court fixed this rental for one year, giving to the lienholder the right to have this rental increased if future circumstances warranted.

(f) In case the debtor buys the property at the higher of two valuations, and the property thereafter increases

in value, then the debtor enjoys this increase. Per contra, if there had been no Frazier-Lemke Act, and lienholder had become the owner of the property, under the law as it existed before the Frazier-Lemke Act was enacted, and the property had thereafter increase in value, then the lienholder would have enjoyed the benefit of such increase.

So that, reduced to its last analysis, the whole controversy seems to be in the nature of a battle with windmills that are not really revolving at all. A great battle is in progress over the question, who shall ultimately enjoy the benefit of an increase in value which may never be realized and whether or not Radford may ever be able to accomplish a task now impossible, that of accumulating enough money to repurchase his farm.

Stated in another way, Radford will be exceedingly fortunate if, for a period of five years he succeeds in paying the rental for the farm as annually fixed by the Court. Assuming that he is successful in doing so (it must be remembered that when he fails to pay the rent, his privilege to purchase is at an end), how is he ever going to buy the farm? Under the Act, he cannot buy the farm except by paying the higher of two valuations. In normal times, he may be able to borrow seventy-five per cent of that valuation. But how is he going to save twenty-five per cent, or at the annual rate of five per cent, of the valuation of the farm, in the present state of affairs.

Let us engage in mathematics for a moment. The Court fixed the annual rental value of the land at $325. We may assume that this fairly represents the productive value of the land. To pay $4,445 for the land in five years (assuming that the value of the land has not increased), Radford would have to borrow at least $3,335. This leaves $1,110 which Radford has to get out of the

land in five years or over $200 a year. In other words, for the Frazier-Lemke Act to be of any practical value to Radford, he must in some occult way, get $525 a year income out of land, the reasonable annual rental value of which has been fixed at $325. If he succeeded in accomplishing this herculean task, he would still have to accomplish that which now is practically impossible, borrow $3,335.

So far as the privilege given by the Act to Radford, to buy the land is concerned, this privilege is of no practical value whatever and is not even worth discussing. Radford has not bought his land. He has no money with which to buy the land. It is not likely that he ever will have this money. Even if he ever did save $200 a year and thus accumulate in five years one-fourth of the value of the land, he would still have to borrow the remaining three-fourths. It is impossible at the present writing, for a farmer to borrow any money except through a governmental agency. There is no certainty that the government will continue to loan money to farmers.

Radford's only hope is that the Court in this case will sustain the principle of the Frazier-Lemke Act. He hopes as an individual insolvent debtor, with the co-operation of the Court, to adjust his outstanding indebtedness. He hopes that this adjustment may bear a due relation to the value of his assets. He also hopes that the law may be amended so that in some way not yet discovered, he may be able to pay the amount of his debt as thus adjusted. Corporations have done this for many years under the sheltering arms of a court of equity and lately under Section 77B of National Bankruptcy Act. Corporations on terms thought to be reasonable, through the appointment of friendly receivers, have remained in practical possession of their assets without paying anything

at all, rental or otherwise. This possession has endured for an indefinite period. Radford does not, under the Frazier-Lemke Act enjoy that which Courts have freely accorded to corporations. Radford pays rent while he is in possession of his farm or he is dispossessed. A corporation does not pay rent or anything else while in the hands of a receiver. Radford is limited to a period of five years in which to repurchase his farm. Corporations have an unlimited period of time in which, under an altered name, to repurchase their property. Radford must pay a valuation fixed by the Court, which is expected to be the full value of the land, and that in cash. Corporations purchase their assets by issuing stocks, bonds and other securities, which may or may not have any value. As a step in this process, corporations make a bid for their assets, which is purely nominal and bears no real relation to the value of the assets. For example, some years ago, the assets of the St. Louis and San Francisco Railway Company were sold for $45,000,000. With the approval of the Court, a public service commission and the Interstate Commerce Commission, securities were issued based on the assets thus acquired, for over seven times the amount of the bid, $315,000,000.

THE FARMERS OF THIS COUNTRY ASK ONLY THAT WHICH CORPORATIONS HAVE LONG ENJOYED.

Underneath the surface, the real objection to the Frazier-Lemke Act is not to the language of the Act, not to what Radford may enjoy by reason of this proceeding, not to what may happen in other cases, but an exhibition of that selfishness which has attempted to act as a brake upon the wheels of progress in every advancing step in the jurisprudence of the world. Corporations have objected to the decision in Munn v. Illinois, the

right of a state to regulate elevator charges. In the Granger cases, they objected to the regulation of railroad rates. Corporations protested loud and long against the anti-trust act. Corporations criticized the decision of this Court in giving to a state the right to regulate the terms of a policy of insurance issued in that state. Corporations denounced the decision of this court in the Minnesota Mortgage Moratorium case.

Corporations claim the Frazier-Lemke Act is unconstitutional (it relates to farmers), and at the same time hail Section 77B as their deliverer in time of trouble.

The reason for the foregoing is the same reason that prompted Adam and Eve to complain of the rules and regulations of the Garden of Eden, which prompted Jonah in declining to go to Nineveh, which caused the troubles of Moses, and has been characteristic of the human race: a belief that man is an isolated atomic fragment, automotive, self-contained, sufficient unto himself alone, regardless of the world of which he is a part, and seeking only that which he claims to be his own, having no thought of the welfare of another, and chafing under every form of law and order. In short, a belief in self, a selfishness which is the basis of all the troubles from which the world is now suffering.

Counsel claim that at one time, "the very essence of a mortgage was the right of the mortgagee to have the property devoted to the satisfaction of his debt" (Pet. Brief, p. 25).

Under the Frazier-Lemke Act, the property, that is the value thereof, is so devoted. The creditor is not allowed to use a worthless debt in bidding on the property and thereby preventing a farmer owner from regaining his property.

Again (Pet. Brief, p. 25): "Until the passage of the Frazier-Lemke Act, no court or legislative body had ever provided that the debtor might

(a) "Keep the property for himself,

(b) "While forcing the mortgagee to accept an amount less than his debt,

(c) "an amount not determined by a sale of the property at which the general public,

(d) "including the mortgagee

"had the opportunity to bid";

the following is submitted:

> "Novelty is not a constitutional objection . . . ."
> (250 U. S. 419).

As to (a): A farmer does not keep the property for himself. Upon the adjudication in bankruptcy, the title to the farm passes to the trustee in bankruptcy. The farmer no longer has a farm to keep. True he is given the privilege of buying a farm once owned by him. The exercise of this privilege is dependent upon paying the reasonable value of the farm.

As to (b): A farmer does not force the mortgagee to accept an amount less than his debts. The farmer in buying the farm pays the reasonable value of the farm. If that value is less than the amount of the debt, such a result is not the fault of the farmer. If the unpaid portion of the debt is discharged in bankruptcy without the payment of any dividends thereon or with the payment of a dividend not discharging the debt in full, such a result is not the fault of the farmer.

As to (c): The general public may attend at a hearing under the Frazier-Lemke Act and may bid on the property. Such a bid if made is evidence of the value of the property. True, as Mr. Justice Brandeis observed at the argument, a person who cannot become the successful bidder is not likely to bid at all. But a lienholder may

subpoena a possible bidder as a witness and have him testify as to what he would have bid if he could have bought the property. This testimony might become evidence of the value of the property.

As to (d): The mortgagee complains loudly that it, the mortgagee, cannot attend the sale and bid the amount of its debt for the security. Nothing prevents the mortgagee from attending the sale. The sale if ever made, is made by an order of Court. The order cannot be entered except on notice to the mortgagee. He has the right to be present when the order is entered. As to the mortgagee bidding on the property and using a bit of paper, that is worthless as to the difference between the value of the property, plus a possible dividend out of the unencumbered non-exempt assets of the debtor and the face of the note, this is the whole crux of the situation.

Before the Frazier-Lemke Act, a mortgagee could bid the amount of his debt, without regard to the value of the security. In this way thousands of farmers were being dispossessed of their farms without hope of redemption.

To remedy the foregoing state of affairs, Congress on the theory that equity regards that as done which ought to have been done, treated as worthless that portion of the debt held by the mortgagee and for which there was no security and on which no payment could be made out of the general assets of the debtor. This put the mortgagee and the mortgagor on an equality when it came to purchasing the farm from the trustee in bankruptcy.

At that stage in the proceeding the farm did not belong to the mortgagee. The only interest that the mortgagee had in the farm was the value thereof. That portion of the debt held by the mortgagee, not represented by the value of the farm and on which no dividend was payable out of the general assets, was a mere scrap of paper, without form and void.

At that stage in the proceeding, the farm did not belong to the mortgagor. The only interest he had in the farm was in the nature of an exemption granted to him by law, the right to purchase the farm for cash at a reasonable value as the result of a judicial decree, at the entry of which the mortgagee had the right to appear, introduce evidence and be heard by counsel.

Such a result is so just and equitable as to merit the approval and not receive the denunciation of the Court.

Counsel for the petitioner (Pet. Brief, p. 26) referred to what is called a "fundamental principle" and claim that upon this principle "was built up the whole system of credit, by which debtors were enabled to borrow money by mortgaging property to the lender."

As to the system of credit to which counsel refer, that system had broken down prior to the enactment of the Frazier-Lemke Act. Radford had borrowed money of Louisville Joint Stock Land Bank. He was not able to pay the interest on the mortgage and the taxes on the land. The system of credit to which counsel refer instead of coming to his aid and in some manner refinancing his debt proceeded to foreclose his mortgage. In those circumstances, Congress reached the conclusion that the preservation of the home of the farmer was more important than the resurrection of a broken down system of credit. In so doing, Congress put the man over the dollar, human welfare over a defunct system of credit.

The intimation of counsel for the petitioner (Pet. Brief, p. 26) that under the Frazier-Lemke Act, "a debtor could borrow money, pledge property to secure payment thereof, and yet upon default retain the property for himself and prevent the lender from having the thing pledged devoted to the payment of the debt" is inaccurate.

Radford does not retain the pledged property for himself except upon payment of the reasonable value thereof.

By the same token, the lender is not prevented from having the thing pledged devoted to the payment of the debt. The lender receives the proceeds of the sale of the thing pledged, just as creditors usually in bankruptcy proceedings receive dividends out of the sale of assets generally.

Counsel for petitioner (Pet. Brief 26) seize upon the term "fundamental law" as used in Hanover National Bank v. Moyses. The fundamental law in the case cited is a law which proceeds upon inquiry and hears before it condemns. The Court in the case cited was discussing the question of the right of a debtor to be granted a discharge from the obligation to pay his debts and the sufficiency of the notice given to creditors of the hearing upon such application. The Court in the case cited did decide that a debtor might be discharged from the payment of his debt and yet, against the consent of the creditor, be allowed to keep his exempt property without paying anything for it unless it was encumbered.

Until the passage of the law construed in the Moyses case, a debtor was not entitled to a discharge from a prior obligation. The law upheld in the Moyses case changed that rule. By a parity of reasoning, the law which we hope will be upheld in this case, likewise changes the law on the subject of bankruptcy.

Under the Frazier-Lemke Act the creditor is still entitled to have the thing pledged devoted to his debt. The creditor receives the proceeds of the sale of the thing pledged. The debtor does not retain the title to the thing pledged. That title passes to the trustee in bankruptcy. The trustee sells the property to the debtor and applies the proceeds towards the payment of the creditor's claim.

Counsel for the petitioner claim that an act of Congress is unconstitutional because it is claimed to be "repugnant to the deep-rooted principles of American law relating to the right of a mortgagee". We are not ad-

vised as to the place in the Constitution where those deep-rooted principles may be found. For example, prior to July 1, 1898, it was a deep-rooted principle of the law of preferential transactions that a creditor of an insolvent debtor who actually knew of such insolvency might accept and retain a preferential transfer of the assets of his debtor, if, the transfer was otherwise in good faith and not fraudulent. After July 1, 1898, such "deep-rooted principles" were uprooted in the circumstances specified in Section 67-E, National Bankruptcy Act.

As to giving to B the property of A (Pet. Brief, p. 29), the Frazier-Lemke Act does not give to the debtor anything that belongs to the creditor. True, if a debtor repurchases his farm and thereafter the farm increases in value, the debtor enjoys such increase. On the other hand, if the debtor repurchases his farm and the farm thereafter decreases in value, the loss falls on the debtor.

SCALING DOWN DEBTS.

As to "scaling down" debts: Louisville Joint Stock Land Bank, under date of October 22, 1933, offered to purchase one-half of its outstanding indebtedness at 55, plus accrued interest.

John G. Hibbard, Secretary of the Association of Joint Stock Land Banks, issued a statement at Rochester, N. Y., on April 6, 1935, to the effect that 44 Joint Stock Land Banks bought and cancelled in 1934, $89,000,000 of their bonds at an average discount of less than 25 per cent.

One of the purposes of the bankruptcy act is to leave the honest debtor free from liability upon previous obligations.

Central Trust Co. v. Chicago Auditorium Assn., 240 U. S. 581, 591;

Williams v. U. S. Fidelity Co., 236 U. S. 549, 554;

Local Loan Co. v. Hunt, 292 U. S. 234.

VALUE OF RADFORD'S FARM.

Counsel for the petitioner complain (Brief, p. 31) that the value of $4,445 placed on Radford's farm by the referee in bankruptcy, approved by the District Court and affirmed by the Circuit Court of Appeals, is not equivalent to the present market value (Brief, p. 31).

The present market value of Radford's farm is a question of fact which has been passed on by a referee in bankruptcy, a District Court and a Circuit Court of Appeals. Ordinarily questions of fact thus decided are not reviewable in this Court.

> "The verdict of the jury approved as it was by the trial and appellate courts, settles the disputed questions of fact" (211 U. S. 611).
>
> See, also, 254 U. S. 600.

Let us face the situation: Through circumstances beyond Radford's control, a farm once worth $18,000 has become reduced in value to $4,445. Suppose the Bank should buy this farm for its accrued debt with interest, estimated at a date not specified in the brief of petitioner, to be $9,205.05 (p. 30). Suppose the farm thereafter became worth in excess of the amount just stated. Has the Bank a constitutional right to this speculative unrealized imaginary enhancement? Why should Radford, because of such speculative theories, be deprived of the opportunity of benefitting by a rise in the present fair and reasonable value of his farm?

In estimating the value of land, speculative possibilities are not considered.

The statement by counsel (Brief, p. 32): "the test of market value is what somebody is willing to pay for the property" is not accurate. Market value is that value which a purchaser desirous but not compelled to buy is

willing to pay and a seller desirous but no compelled to sell is willing to take.

Consult:

5 Words & Phrases (1st Ed.), pp. 4583, *et seq.*;
3 Words & Phrases (2nd Ed.), pp. 300, 303, *et seq.*

Counsel claim that if Radford had given the Bank a deed to the farm and it had cancelled the debt against Radford, or if the referee had permitted the Bank to purchase Radford's farm from the trustee in bankruptcy and pay for it by cancelling his debt, the Bank would have been paying more than $4,445 for the farm. Hence it is argued that the market value of the farm is more than the amount stated. This alleged discrepancy is sought to be worked out in this way:

If Radford pays the Bank $4,445 for the farm (and even in the absence of such payment), the Bank has a general claim against Radford for the difference between $4,445 and the amount of its debt with interest as it existed at the date of the filing of the petition herein. The value of this claim depends on the dividend that may be declared thereon. Radford has some unencumbered non-exempt personal property. He also has some encumbered non-exempt personal property. Nobody can tell from the record in this case how much this latter class of property may realize for the general creditors, nor how much the Land Bank would have lost in cancelling its general claim against Radford, because no one knows how much dividends it may receive thereon. Hence there is no tangible basis for the claim that $4,445 is not equivalent to the present market value of the farm.

RISK OF DECLINE.

Complaint is made, a creditor takes the risk of decline in the value of the security during the moratorium period

(Brief, p. 37). At one time, the bank was willing to take this risk, by asking Radford for a deed to the property, and by offering to buy the property for its debt. In either case, the creditor would have taken the risk of decline. Creditor took the risk of decline when it made its loans. Before bankruptcy, Radford took the risk of decline. His original equity of $9,000 in the farm is completely lost. But as pointed out in First Additional Brief for Respondent (blue cover), pp. 22, *et seq.*, Radford is required to agree to the purchase of the farm. Hence Radford takes the risk of decline, while the Bank, by a reappraisal, may get all the benefit of an increase.

> "Damages which are uncertain, contingent, or speculative in their nature cannot be made the basis of a recovery" (17 Corpus Juris, p. 753, sec. 3; 191 U. S. 112; 49 Kan. 17).

But:

(a) Instead of increasing in value, if Radford bought at $4,445, the farm might decrease in value; hence Radford would lose.

(b) The bank might sell Radford's farm for less than $4,445, or at a price that did not reflect the subsequently enhanced value, if any, of the farm. In that event, the bank would sustain a loss.

THE REAPPRAISAL PROVISION.

Counsel for the Land Bank claim that the reappraisal provision of the Frazier-Lemke Act does not safeguard to the Land Bank the right to benefit from any enhanced value of the mortgaged property (Brief, p. 32).

In support of this statement, counsel invade the realm of the imagination. The value of the land may increase (it may decrease); the increase may reach a peak (no one may tell when that will happen); Radford may fail to

discover that the value of the land has reached its peak (he is not omniscient); Radford may not be able to buy the farm when it has reached its peak (he is not made of money) Radford not buying the land at its peak, it may decrease in value and the Bank may lose the peak value. So runs the argument of the counsel for the petitioner, *ad libitum* and *ad infinitum*.

But suppose the Frazier-Lemke Act had not been enacted, suppose the Bank bought the farm at a foreclosure sale, suppose the Bank sold the land before the peak had been reached, suppose the Bank allowed the peak to go by and sold the land on a falling market? Who would make good to the Bank the loss thus sustained?

PUBLIC SALE.

The lienholder may not complain if it be deprived of a public sale of Radford's farm.

In the absence of a statute or a provision in a mortgage to the contrary, a mortgage may be foreclosed at private sale.

> 3 Jones on Mortgages (8 Ed.), p. 926, Sec. 2404.

As to the alleged constitutional right of a mortgagee to a public sale of the security:

> "Where not restricted by statute, the Court may in the exercise of its discretion, order either a private or public sale as the best interests of the parties require."
>
> 35 Corpus Juris, p. 34, Sec. 44.

In bankruptcy, "private sales both of real and personal property may be made in such manner as the Court may direct."

> 6 Remington on Bankruptcy, 3d Ed., Sec. 2541;
> 11 United States Code, Annotated, Sec. 10, p. 528, note 733.

Indeed, foreclosure sales in Federal Courts may now be conducted as private sales.

48 St. L., p. 1119.

What is the purpose of a public sale? That purpose is the protection of the mortgagor, to insure competition at the sale and to increase the price bid by possibly increasing the number of bidders.

Who would attend a public sale if one were accorded the mortgagee, and become a bidder in the present economic conditions of the country? Only the mortgagee.

If the mortgagee could bid at a private sale, is there any reason why the mortgagee could not thereafter for its own benefit conduct a public auction and sell the farm to the highest bidder? None.

Why should the mortgagee complain of the elimination of a public sale in the foreclosure of a mortgage? Here is the answer:

The lienholder is not so much concerned in the question, is the sale of Radford's property to be public or private, as it is in having a sale of some kind take place which may result in the dispossession of Radford and his ownership of the farm.

Whence did the practice of selling mortgaged property in public originate? Certainly not in the consciousness of a mortgagee. Centuries ago, mortgagees as an incident of a loan, exacted an instrument which executed itself. The title *ipso facto* became complete in the mortgagee if the debt was not paid as and when so agreed. A chancellor discovered the equity of redemption. As a corollary, the chancellor granted to a mortgagee the right to foreclose the equity of redemption. Then, in the give and take of the law, the balancing of remedies, the Court, for the protection of the mortgagor, required the sale to be public.

What constitutional right of a mortgagee is invaded by a private sale at which he may bid?

The real complaint of the mortgagor is not the absence of a public sale; it is the absence of a sale, public or private, by which it may exchange a worthless piece of paper in payment of an equity which in turn has no present value.

OPTION TO PURCHASE.

As to the statement: "The mortgaged property was sold to Radford for less than half that which the Land Bank offered to pay for it in cash" (Pet. Brief, p. 19), here we have an admission that the mortgaged property was actually sold to Radford, not merely that Radford was given an option to purchase it.

Counsel for the petitioner complain of the terms of purchase granted a debtor by the Frazier-Lemke Act (Brief, p. 41).

Debtor does not, as shown herein, obtain an option to purchase the farm. Debtor is required to agree to buy the farm in question.

The farm is not sold for the "appraised" value. The appraisal is but a step in a judicial ascertainment of the value of the farm. Such ascertainment was made in the case at bar.

The repurchase of the farm does not of itself "discharge the mortgage debt." Debtor, upon such repurchase, is granted the right "to apply" for his discharge.

Debtor cannot "throw the property back on the hands of the mortgagees or the Court." Debtor has agreed to purchase the farm. Here again is a bundle of errors (Pet. Brief, p. 41):

"The mortgagee is compelled:

(a) "to permit the farmer to buy back the property at an appraised value;

(b) "not necessarily the market value;

(c) "and be released from his indebtedness;

(d) "even though the mortgagee

(e) "or the general public would bid much more than the appraised or reappraised value of the property."

As to a mortgagee being compelled to permit a farmer to repurchase his farm: Centuries ago lienholders were required to permit debtors to redeem from a foreclosure in the face of a mortgage to the contrary. The farmer does not repurchase his farm at an "appraised value," as that term is generally understood. The farmer buys his farm, if at all, at a value judicially ascertained, upon the hearing of evidence.

(b) In the proceeding at bar, the "reasonable value" and the "market value" are identical.

(c) The farmer is not released from his indebtedness by repurchasing his farm. That release comes, if at all, by reason of the general bankruptcy law (186 U. S. 186).

(d) The mortgagee did not bid more than the appraised value of the property. That portion of its debt in excess of the appraised value is worthless.

(e) The general public did not bid on Radford's property, nor is there any evidence of what the general public would have bid if it had had an opportunity to do so.

SALE FREE OF LIEN.

The fact that courts have regarded as discretionary the power to sell property free of lien and to transfer the

lien to the proceeds (as contended by counsel for lienholder), does not make such rule a doctrine of constitutional law, nor prevent Congress from authorizing such sale to be made in all cases if it so deems wise. Prior to the enactment of the Frazier-Lemke Act, a court in selling encumbered property, in case of an admittedly valid lien thereon, was only concerned with the value of the equity of redemption. Under the Frazier-Lemke Act, the Court is concerned with the reacquisition by a farmer of the title to his farm free and clear of lien.

As to authorizing a sale of property "at a price less than that which the creditor himself offered to pay in cash for the property" (Pet. Brief, p. 18), here again the reference to cash is "as baseless as the fabric of a vision". A payment of cash to a trustee by a lienholder to be immediately returned to the lienholder is simply converting a court of bankruptcy into a clearance station for despoiling an individual of his habitation. Certainly, a lienholder does not possess a constitutional right to such a result.

As to the bank offering to pay for the land "in cash" by issuing a check, the proceeds of which, less court costs, would have been immediately returned to the lienholder, such a result, if allowable (which debtor denies), would deprive a farmer of the provisions of a beneficient act designed to promote the general welfare and to nullify such legislation.

In determining the market value of property, the value which the owner places on it cannot be considered (20 Corpus Juris, p. 728, Sec. 187; see also, 36 L. R. A. N. S. 162). So what the land bank itself offered for the property is immaterial.

In cases arising under the power of eminent domain, the rule is thus stated:

> "The mortgagee of the land condemned is entitled to the amount of the mortgage and interest if the

value of the land exceeds the amount of the mortgage" (not so in the case at bar).

"And to the value of the land less the proper apportionment of taxes and assessment if the value of the land is less than the face of the mortgage."

20 Corpus Juris, p. 740, sec. 193;
In re Public Park, 172 N. Y. Supp. 50, 51, 52.

As to the power of sale vested in the bankruptcy court:
Robertson v. Howard, 229 U. S. 254, 263.

COMPOSITIONS.

Lienholder admits that by the machinery of composition, with the approval of the court, majority creditors may "bind the dissenting minorities" (Pet. Brief, pp. 19, 20).

But it is not the majority which *per se* has the right to bind a dissentient minority. The approval of a court is a *sine qua non* to the validity of a composition (Sec. 12d). The consent of the majority is certainly not a constitutional requisite to such approval. Such consent is merely evidential of the fairness of the composition.

To intimate (Pet. Brief, p. 19), that "corporation reorganizations under Sections 74 and 77 • • • are merely a form of composition" is a vain effort of counsel to uphold for others that which is attempted to be denied to farmers.

It is asserted that "compositions have never affected a secured claim held in full by a single creditor" (Pet. Brief, p. 21). This statement may be admitted, but what of it? Congress in the enactment of legislation is not limited to the re-enactment of legislation already in existence. The act of legislation is progressive in its nature and the validity of an act is not affected by its novelty

(250 U. S. 419). This is recognized by Judge Chesnut (7 Fed. Supp. 674); Judge Simons (74 Fed. 2d, 579); Judge Sparks (70 Fed. 2d, 932); and by Judge Parker in the case decided by the Fourth Circuit Court of Appeals, April 2, 1935.

The power of Congress to alter the established state of the law, will be further discussed under the heading, *post*, The Fundamental Law.

Suppose a debtor executed twelve separate mortgages, each to a separate creditor, upon an undivided one-twelfth interest in a farm. Suppose a majority of such creditors, in number and amount, agreed to a composition of fifty cents on the dollar. According to counsel for petitioner, the majority could bind a minority because *a class theory could thereby come into play* (Pet. Brief, p. 21).

Does a constitutional form of government, ordained by the people to promote the general welfare, include within its constitutional protection, "a class theory"?

Congress may recognize a class theory, if deemed expedient, but the Constitution does not make imperative such recognition.

Suppose, on the other hand, that a debtor executed one mortgage on one tract of land to secure twelve different bonds, held by twelve different people. In this case, compulsory composition is admittedly constitutional.

Suppose a debtor executes one mortgage on one tract of land to secure one bond, why may not Congress make a composition compulsory as to one creditor?

Whatever else may be said of a composition, the fact remains:

(a) Compositions in proceedings in bankruptcy are only valid to the extent authorized by law and as may be approved by the Court.

National Bankruptcy Law, sec. 12.

Hence, the statutory validity of a composition depends upon the nature and extent of the power of Congress to establish a uniform law on the subject of bankruptcy. If Congress may permit one creditor to be bound, because of an evidential fact, that is, two creditors believe that such result is just and equitable, and the court agrees with them; certainly Congress can establish such evidential fact by legislation, uniform in its operation, subject of course, to the power of the court to decline to enforce that law if deemed unreasonable.

What is the theory of a composition consented to by a majority of the creditors and dissented from by a minority? The theory is that it is to the interest of the creditors as a whole, that the composition be confirmed. Congress has recognized that it is to the interest of creditors as a whole that the wholesale foreclosure of mortgages should cease, that the value of farm lands shall be stabilized, and to that end, mortgages should be foreclosed, if at all, "decently and in order".

We are told by counsel for a lienholder which is seeking to foreclose a mortgage on a farm, asking that its debt be paid in full, all in utter disregard of the effect of such action upon the debtor and his other creditors, that "compositions are based upon (1) the general principle of equality and reciprocity among the creditors, and (2) the democratic principle that a majority of a class similarly situated shall control".

It is difficult to discern any theory of "equality and reciprocity among the creditors" in the effort of the lienholder to acquire for itself alone without a resultant benefit to anyone else, the farm of a debtor.

As to the democratic principle of a control by the majority of a class, Congress has given expression to this principle by protecting a majority of the class known as creditors, from:

(a) An improvident and wholesale foreclosure of securities, thus depreciating the value thereof as a class;

(b) An undue inflation of the currency, which might result from issuing sufficient currency to enable all debtors to pay their debts in full and thereby depreciate the value of such currency; and

(c) Unduly raising the price level of agricultural commodities so high as to make it impossible for the creditors of farmers to buy the necessities of life, except at greatly increased prices, thus depreciating the value of the income of such creditors.

To particularize:

(a) Prevailing agricultural and financial conditions in America make it impossible for Louisville Joint Stock Land Bank to continue in business. Its ability to do so depended upon its ability to sell its bonds to the investing public. The government has refused to guarantee the payment of the bonds issued by Joint Stock Land Banks. Absent such guarantee, the investing public refuses to buy the bonds of the Louisville Joint Stock Land Bank. In those circumstances the Bank is itself a debtor, strenuously endeavoring to secure sufficint funds to pay its own obligations. Instead of being a creditor (speaking generically), it is a debtor in an amount, at least equal to the value of its assets.

The Bank, in liquidating its affairs, is desirous of converting its assets into cash as soon as possible without regard to the effect of such action upon even its own creditors. To that end it claims the right to foreclose mortgages so that, as advertised by it, foreclosed farms may be thrown upon the market at bargain prices and below their market value.

The justification of such conduct is sought in the "democratic principle" that the majority rule.

POWER OF COURTS OF EQUITY.

We are told by counsel for the lienholder: "Moreover, courts of equity have long had the power to compel dissenting creditors to submit to a plan which the creditors in the majority accept as beneficial." Counsel for the respondent are advised of this doctrine, having argued the same as counsel for the purchaser in the litigation growing out of the sale of The Kansas City, Mexico & Orient Railway Company.

Trustees Corporation v. K. C., M. & O. Ry. Co., 18 Fed. (2d), 765, 26 Fed. (2d), 876; Consult, 28 Fed. (2d), 174, 176 (Walter H. Sanborn, Circuit Judge).

Prior to the enactment of Section 77, National Bankruptcy Law, and since, courts of equity in foreclosing a mortgage on the property of a corporation, permitted the bond holders, the general creditors and the stockholders in the old corporation to form a new corporation and thus retain the possession of the property of the old corporation. So zealously did the Court protect this right, that in the Boyd case (228 U. S. 482) a plan of reorganization which attempted to exclude the creditors of the old company from a share in the assets in the new company, was held fraudulent and therefore void. Such a result can only be predicated on the fact that the old and the new corporation are in effect one and the same corporation, the same debtor in a reorganized form, with the same bondholders, general creditors and stockholders.

In the carrying out of this doctrine, this Court in Kansas City Terminal Railway Company v. Central Union Trust Company of New York (271 U. S. 445), decided that it was not necessary in every case for the creditors of the old company to be paid in full before the

stockholders in the old company were given an interest in the new company. The doctrine of these cases has been written into the bankruptcy law upheld as valid in the Rock Island cases decided by this Court, April 1, 1935.

Radford is asking at the hands of this Court the same right to protect his interest in his farm that this Court has heretofore given to stockholders in a corporation to protect their interests in that corporation.

GUNN v. BARRY.

Counsel for the petitioner cite Gunn v. Barry, 15 Wall. 610. This is the third appearance of this case in the pending litigation. Gunn v. Barry dealt with the action of a state which was held invalid because in conflict with the contract laws of the Federal Constitution. Counsel for petitioner (Pet. Brief, p. 26) had previously admitted "that Congress under the power to pass laws on the subject of bankruptcies, can impair the obligation of a contract."

In re Dillard, Fed. Cas. 3912, the bankrupt filed his petition to be adjudicated as such on March 26, 1872.

On March 3, 1873, Congress amended National Bankruptcy Law as it related to homesteads. The Court ruled: The bankrupt in this case * * * (was) adjudicated bankrupts prior to the passage of the Act of March 3, 1873. In our opinion, the relation of the bankrupt to his property is fixed the moment he files his petition in voluntary bankruptcy * * *. The rights of his creditors to his estate are determined at the same time."

Held, therefore, a state law thereafter passed did not affect the exemptions of the debtor.

In the face of such action on the part of Congress, a single creditor claims that such act is void, because, here-

tofore one creditor was only bound when two creditors so agreed, and thereafter in the absence of such agreement, a single creditor could be bound, hence deprived of his property without due process of law. "Due process of law" as thus defined, is reduced to the "due process" of the will of other creditors, who accordingly are to be deemed greater than Congress.

LOAN ASS'N VERSUS TOPEKA, 20 WALL. 655.

In citing the case just mentioned, counsel say that the language in the case "provides an answer to the popular cry that Congress should

(a) "be able to adopt legislation in order to relieve debtors from their improvident obligations at the expense of their creditors, and

(b) "yet permit the debtors to retain the property which they have pledged for security for the thing borrowed."

It is interesting to note that a land bank, a creditor, refers to Radford, its debtor, as "improvident." What about the bank which loaned Radford $9,000 and is now in a state of liquidation because its bonds are not being purchased in the market at par?

As to debtors being improvident, Courts deal, in interpreting a law, with people as they are and not as they ought to be. Congress, however improvident a debtor had been, regarded his rehabilitation as a step in the program of economic recovery. If such a debtor had no assets, it may be argued that such a step was at the expense of his creditors. But such argument fails when we are reminded that a creditor loses nothing in the discharge of a debtor who is without assets. In fact he sometimes gains the privilege of a deductible loss in making up his income tax return.

As to (b): This contention of the counsel for the petitioners has been frequently analyzed in this brief.

The case now being considered is interesting in the use it makes of the word "robbery". In the brief filed in the District Court counsel for the petitioner said of the Frazier-Lemke Act (in italics) "This is not bankruptcy but robbery". When counsel were reminded that they were discussing an Act of Congress approved by the President, and thereby charging two branches of the government with "robbery", this statement in the form quoted was omitted in the brief filed in the Circuit Court of Appeals, nor in that form is it found in the brief filed in this court. In view of the citation of the case now being considered, we are not advised whether or not counsel are still believing that a robbery may be committed as a result of this proceeding nor just whom counsel charge with that crime.

OCHOA v. HERNANDEZ, 230 U. S. 139.

This case cited by the counsel for the petitioner (Brief, p. 30) is a case arising under a state law. The case has no application to a law passed by Congress in the exercise of a power to establish a uniform law on the subject of bankruptcy.

EXEMPTIONS.

Counsel for the lienholder claims that the Frazier-Lemke Act is void for the alleged reason that it makes a distinction between creditors who hold a lien on exempt property and creditors who hold a lien on not exempt property (Brief, p. 35). It is claimed that in case of encumbered exempt property, the exempt property is set

aside and passes out of the jurisdiction of the bankruptcy court, while the encumbered non-exempt property remains in the jurisdiction of the bankruptcy court and may be repurchased free of liens by the farmer under the Frazier-Lemke Act.

As applied to the facts in the proceeding at bar, it does not appear that Radford has any encumbered exempt property. Hence in the proceeding at bar, no discrimination is being practiced against the lienholder (Consult, The Fifth Amendment, *ante*, pp. ——).

But under the Frazier-Lemke Act, exempt property does not pass out of the jurisdiction of the court. Sec. 75, sub. (n) provides:

> "the filing of a petition pleading for relief under this section shall subject the farmer and his property wherever located, to the exclusive jurisdiction of the court."

Subdivision (o), section 75, refers to the protection of "the farmer or his property".

Paragraph 7 requires the court to "stay all proceedings for a period of five years".

It will thus be seen that in none of the provisions of the Act, has any distinction been made between exempt property and non-exempt property.

Under the general bankruptcy law, it is true that exempt property passes out of the jurisdiction of the court. This result occurs because if the property is exempt, there is nothing the court can do with the property under the bankruptcy law, except to set it aside. But having regard to the spirit and the intent of the Frazier-Lemke Act (for the spirit and the intent of an act always governs the interpretation thereof), the Court is concerned with enabling the farmer to purchase the exempt property, under paragraph 7 of the Act to the same extent and in

like manner as the purchase of non-exempt property. In fact, the primary purpose of the Frazier-Lemke Act is to protect farmers in the enjoyment of their homes. Many of these homes are exempt, to a greater or a lesser extent. To exclude exempt property from the operation of the Frazier-Lemke Act, would as a practical proposition, emasculate an act of Congress enacted in a humane spirit and designed to accomplish a beneficent purpose.

DEFICIENCY JUDGMENT.

Counsel for the lienholder claims that the Frazier-Lemke Act is void because, it is alleged: "no provision is made for a deficiency claim by the mortgagee against the bankrupt estate" (Brief, p. 36).

The Frazier-Lemke Act is an amendment to Section 75, National Bankruptcy Law. Section 75 is especially declared to be a part of a new chapter added to National Bankruptcy Law, hence it is a part of the law in its entirety. Consult subdivision (n) Section 75.

Under Section 57 (h), National Bankruptcy Law, a secured creditor is allowed a general claim for the difference between the value of his security and the amount of his debt. So that the lienholder is allowed a deficiency claim against the estate of the bankrupt.

So far as *in re* Bradford, cited by counsel for lienholder is concerned: That case was reversed on appeal, 4 C. C. A., April 2, 1935.

When President Roosevelt, in approving the bill referred to deficiency judgments, he was not referring to claims allowed in favor of secured creditors for the unsecured portions of their debts against the estate of the bankrupt. He was referring to the entry of a deficiency judgment in a suit to foreclose a mortgage.

As to the "arbitrary destruction of a contract right" (Petitioner Brief, p. 36), we cite from the same document (p. 26) Congress "can impair the obligation of contracts —for such is the very essence of bankruptcy law" (186 U. S. 186).

As to "the intent of the authors of the Frazier-Lemke Act" (Brief, p. 37), they were concerned with the right of a debtor to be discharged of the obligation to pay his debts, a right upheld by this Court (186 U. S. 186), not with the question, should a lienholder be allowed a claim of a general nature against the estate of a debtor for the unsecured part of his claim.

It has been pointed out, one creditor may not complain under the Fifth Amendment of an injury to another (Consult, The Fifth Amendment, *ante*, pp. ——).

As to the alleged "confiscation" (Brief, p. 37):

(a) The Bank is clearly entitled to a general claim for the unsecured portion of its debt against the unsecured non-exempt assets of Radford (Sec. 57-h, 75-n).

(b) What is not so paid of such general claim is dischargeable in bankrutpcy (186 U. S. 186).

(c) No evidence is offered that the amount of the dividend which the bank may receive on its unsecured debt is so substantial as to be worthy of discussion. *De minimis non curat lex.*

Counsel for the lienholder entertain erroneous, at times peculiar, notions as to the deficiency which may remain unpaid if Radford should buy the farm.

At Brief, p. 36, reference is made to "a very nebulous possible right to participate with general creditors in such amount as is realized from unpledged (should have added, non-exempt) property". (Consult, National Bankruptcy Act, Sec. 57h; also see 75[n].)

Next we are told that if Radford buys the farm (Brief, p. 37), the Bank "will either have (1) *perhaps*, a deficiency claim * * * thereby *greatly* reducing the amount which can be paid to general creditors". We assume all this means that notwithstanding the clear language of the statute just cited (which, by the way, counsel do not cite), the right is thought to be "nebulous", while, in the absence of definite evidence to the contrary, the amount involved is said to be "great".

"DISCRIMINATIONS."

Counsel for the petitioner (Brief, p. 38) have set up another man of straw, thrown out another smoke screen by claiming that there is a legislative discrimination between the relative rights of secured and unsecured creditors, in electing between paragraphs 3 and 7 of the Frazier-Lemke Act. The burden of this argument is that this alleged discrimination enures to the benefit of the secured creditor. A person benefited by the operation of an act cannot complain that someone else is thereby injured, and that hence the act is void. (Consult, The Fifth Amendment, *ante* p. —).

The contention of counsel that an unsecured creditor should have the right to say whether or not a secured creditor shall be governed by paragraph 3 or by paragraph 7 of the Frazier-Lemke Act, has potentialities within it of interest. Suppose the shoe was on the other foot. Suppose an unsecured creditor could decide what should be done with respect to the security of a secured creditor. In such a case, we imagine the secured creditor would claim, loud and long, that the unsecured creditor was aiding in depriving the secured creditor of his property without due process of law.

We now enter upon a very remarkable contention: "The possibility in many cases of a mortgagee or secured creditor being worse off than the unsecured creditor" (Brief, p. 37).

Here, again, we have a failure on the part of counsel to understand the function of this Court in passing on questions arising under the Fifth Amendment. In such cases, the Court deals with the facts of a particular case, not with the possibilities which may or may not arise in other cases. The rule is to decide such questions "as the matter shall require", so said Solomon of old (1 Kings, 8:59). And so has this Court recently reiterated.

Nashville, etc., Ry. Co. v. Walters, 79 L. Ed. 458, 461.

The argument now being analyzed has a fantastical basis. Counsel imagine that a farmer may have unpledged property worth $8,000 and at the same time own a farm mortgaged for $10,000. In those circumstances, it is further imagined that the farmer, instead of using his unpledged assets to take care of the mortgage, will risk going into bankruptcy and perhaps lose all his property. In nine months of concentrated intensive experience in the administration of the Frazier-Lemke Act, the counsel writing this brief has never heard of such a farmer.

This whole argument is a failure to understand Secs. 57(h), 75(n).

In the Rock Island cases decided by this Court, April 1, 1935, Section 2, clause 15, National Bankruptcy Act, was construed in *pari materia* with Section 77. By the same token, Sections 57(h) and 75(n) are to be construed as a part of the Frazier-Lemke Act.

In the instance hypothesized by counsel for the petitioner (Brief, p. 37), the problem would be solved in this way:

The mortgagee would receive $6,000 on a debt of $10,000, leaving unpaid $4,000. This $4,000 would then be allowed as a general claim. In this way, the amount of the general claims would be increased to $14,000. Dividing the unpledged general assets ($8,000), among claims of general nature amounting to $14,000, we would have a dividend of 57 per cent. on the general claims. So the mortgagee would receive $6,000 as a preferred creditor, plus $2,280 (57 per cent. of $4,000) on its unsecured unpaid balance, a total of $8,280, or 82.8 per cent. of its claim. Unsecured creditors in turn would receive a dividend of 57 per cent.

If it be true, as contended by counsel for the petitioner, (Brief, p. 38), "the mortgagee is penalized 10 per cent. for having taken security", the remedy is at hand, release the security.

In the case of Becker v. Gill, 206 Fed. 36, a curious situation arose. An unreported conditional sale was held in the District Court to be invalid as a security against creditors who extended credit between the date of the execution and the recording of the instrument. The amount of these debts was greater than the value of the security. In this way the entire security was held invalid. The District Court, however, went further and wiped out the debt of the formally secured creditor by deciding that all of the intermediate creditors were entitled to be paid in full before the alleged secured creditor was entitled to be paid anything on his general claim. On appeal, the District Court was reversed. A majority of the Court held that if the security was declared invalid, the general claim remaining was on a parity with other general claims. He who has loved and lost is better than he who has never loved at all. In such instances, his sense of loss is not aggravated by the imposition of a penalty. So a secured creditor, who once secured is there-

after freed of such an incident, is not by reason of his former secured condition and of the loss which he has sustained, further penalized; certainly not in a court of equity.

In Morrison v. Rieman, 249 Fed. 97, a judgment creditor filed a petition in bankruptcy against a debtor. It was claimed that being a secured creditor, in that he had a judgment lien against all of the realty of the debtor he could not file a petition in involuntary bankruptcy (Consul Nat. Bank. Act, Sec. 59b). The petitioning creditor released his judgment lien and was allowed to become a general creditor (pp. 101-103).

The practice of waiving securities in order to be eligible to file an involuntary petition or to vote for a trustee, is very generally recognized.

2 Remington on Bankruptcy (3d Ed.), p. 327, Sec. 934.

LAND BANK, A FEDERAL AGENCY.

Counsel for the petitioner, who object strenuously to any classification in favor of a farmer, protest loudly that the Land Bank is a Federal Agency, and on that account claim especial consideration for it as a creditor. No distinction of that kind is found in the Act. When a Federal Corporation becomes a creditor, it is placed on the same basis in a proceeding in bankruptcy as any other creditor.

14 Federal Digest (West Pub. Co.), p. 16015, Sec. 52½;

Sloan Shipyards v. U. S. Fleet Corporation, 258 U. S. 549, 570.

As to the bonds issued by the Land Bank being "a lawful investment for all fiduciary and trust funds", there is no evidence that any of the bonds of the Louisville Joint Stock Land Bank are so held.

But inasmuch as debts of a fiduciary character are dischargable in bankruptcy (Hennequin v. Clews, 111 U. S. 676; 7 Remington on Bankruptcy, 4th Ed., p. 811, Sec. 3589), it is difficult to see why Radford who executed a note to a land bank in a transaction non-fiduciary in character should be denied relief in this proceeding, just because the land bank issued its bonds, pledged Radford's notes as security for its bonds and then sold its bonds to fiduciaries.

Under Sec. 676, Title 12, Ch. 7, Banks and Banking, United States Code Annotated, a land bank "may sue and be sued * * * as fully as natural persons".

As to whether or not investors would ever have purchased the securities issued by the land bank if the Frazier-Lemke Act had been in effect when such securities were issued, we have no means of knowing. We do know that for some time prior to June 28, 1934, Louisville Joint Stock Land Bank was not selling its securities, was liquidating its affairs and was offering to buy its own securities at fifty-five cents on the dollar. We may also admit that if investors could have foreseen the economic conditions which gave rise to the Frazier-Lemke Act, the land banks would never have sold any securities at all.

STATE'S RIGHTS.

Counsel for petitioner claim that the Frazier-Lemke Act ousts "the creditor of all of the rights given under the mortgage, and under the laws of the state where the property is located".

The obligation of the mortgage contract may be impaired by Congress in the establishment of a Uniform Law on the subject of bankruptcy (186 U. S. 186). The bankruptcy law is as much the law of each state as it is a law of the United States.

Conner v. Long, 104 U. S. 228.

The bankruptcy law is supreme.

Globe Bank & T. Co. v. Martin, 236 U. S. 288;
Re Watts, 190 U. S. 1;
Ex parte Baldwin, 291 U. S. 551;
Moore v. Bay, 284 U. S. 4;
Int. Shoe Co. v. Pinkus, 278 U. S. 261.

Judge Chesnut's opinion has been reversed on appeal (4 C. C. A., April 2, 1935).

INTEREST.

Complaint is made (Pet. Brief, p. 36): "Interest on the mortgage debt is wiped out".

That is, a debtor who pays rental value is also, according to leanholder, expected to pay interest value. When times were normal, Radford paid interest, but not also rent. He was an owner then and owners do not pay rent. By the adjudication in bankruptcy, Radford became a tenant. As a tenant, he pays rent. A tenant is not expected to pay both rent and interest.

As to the alleged "neglible amount" which may be realized from the rental, that is not the fault of Radford. That amount is based on the testimony of Radford as to the productive value of the farm. Radford is not responsible for the taxes or the insurance. Tenants are usually not so concerned.

THE MORATORIUM.

Complaint is made of the "rigid fixation" of the term of the moratorium authorized by the Frazier-Lemke Act, "by legislative fiat" (Pet. Brief, p. 40).

Under the doctrine recognized in the Minnesota Mortgage Moratorium Case, 290 U. S. 398, the moratorium

authorized by the Frazier-Lemke Act ceases when the Court decides, the reason for it has ceased.

And it is not accurate to claim that "the creditor cannot for five years take any step, either in a State or Federal Court:

(a) "to enforce his mortgage lien; or

(b) "collect the rents and profits * * * or

(c) "otherwise to obtain any equitable relief whatever" (Brief, p. 40).

The creditor may enforce his mortgage lien if the debtor fails to pay the rent.

The creditor may collect the rents and profits by an order of the Court directing the trustee in bankruptcy to collect them and pay them to the lienholders.

THE RENTAL.

Counsel complain (Brief, p. 42) that the rental to be paid by the debtor is "to be distributed between the secured and unsecured creditors, as their interests may appear".

How else could the rental be distributed? But in the case at bar, the rental does not amount to the interest on the mortgage debt. Hence, the petitioner would get all the net proceeds of the rental, and no question of distribution can arise.

It is true that the "first payment of rent does not have to be paid for six months."

In other words, this Court is expected to rule that a law which by way of exemption gives a six months' credit of $162.50 to a debtor who has lost an equity of $9,000 in a farm, as against a creditor who has profited over $800

by reason of its dealings with such debtor, is so unreasonable and arbitrary as to violate the Fifth Amendment.

Res ipso loquitur.

But the first six months of the moratorium are not "without compensation". When paid, at the end of six months, the rental is for the six months which have expired and for the ensuing six months.

As to the crops: The mortgage of the lienholder continues to be a mortgage on the crops until Radford buys the farm (Consult paragraph 2, Frezier-Lemke Act).

As to "intangibles":

(a) The lienholder in this case has no lien on intangibles.

(b) The debtor is not at this time seeking to purchase or retain any intangibles.

(c) The debtor does not own any "stocks, bonds, savings accounts (or) insurance policies".

(d) If he did own such last described intangibles, then the act properly construed would not apply to them. Such intangibles have nothing to do with operating the farm.

(e) A debtor could not in any event retain intangibles without paying a rental therefor. Certainly no court would ever rule a debtor by paying rent on a farm, could keep a lot of intangibles of value, without paying a rental therefor.

As to the contention of counsel for petitioner (Brief, p. 43):

(a) "No provision is made for the payment of taxes, insurance or repairs,

(b) "in contrast to the express requirements of the earlier portion of the Act."

Under the "earlier portion of the Act" (Sec. 3), Radford would have paid $45.50 rent the first year, plus the taxes, but not insurance or repairs. The lienholder objected to these "earlier portions" of the Act. Thereupon Radford's rent was increased to $325, but no taxes, insurance or repairs are to be paid by Radford. Radford is now a tenant of his former farm. Tenants who pay rent do not usually pay taxes, interest, insurance or repairs.

As to "no assurance that the mortgagee would receive a dollar during the five years"; in case the mortgagee owned the farm, this assurance would still be lacking. The rental will either be paid by Radford or he will lose the farm. He is not responsible for the limited income of the farm. $220 less 7% for costs of administration on $325, or $22.75, leaves $197.25. If the bank spends that much in the upkeep of the farm, that again is not the fault of Radford. If the bank owned the farm, the upkeep charge would not be any less than if Radford stayed on the farm.

RE-APPRAISAL.

Counsel for the petitioner contends (Brief, p. 38): "only encumbered real estate is subject to the reappraisement provisions, and then only upon the request of the lienholder".

In making this contention, counsel have omitted advising this Court that Judge Dawson ruled to the contrary (Rec., p. 63). The question was not discussed in the Circuit Court of Appeals. Judge Dawson decided that the trustee in bankruptcy, by virtue of paragraph 2 of the Frazier-Lemke Act, became a lienholder on all the property of the debtor and hence was entitled to the reappraisal provisions of paragraph 7.

Paragraph 7 provides: "that upon request of any lienholder on real estate, the Court shall cause a reappraisal * * *".

Thus far it is clear that Louisville Joint Stock Land Bank, as a lienholder on the property of Radford, is entitled to a reappraisal. The question mooted by counsel is the proposition, to what does the reappraisal extend? Counsel invoke a rule of construction, "a reappraisal of such real estate" implies the last antecedent, hence "such real estate" means the real estate on which the lienholder has a lien. Courts in interpreting statutes have regard to the spirit and intent of the law and are not limited, but merely aided, by rules of grammatical construction. Legislative draftsmen are not always grammarians.

Taking up the Frazier-Lemke Act, we find that at the outset it is required, that all of the property of the debtor "whether pledged, encumbered or unencumbered by liens or otherwise, be appraised".

In paragraph 2 "a general lien" is imposed on the property of the debtor in favor of the trustee.

Paragraph 7 provides: "At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession; provided that upon request of any lienholder on real estate, the Court shall cause a reappraisal of such real estate".

It is respectfully submitted, to effectuate the purpose and intent of the Act, the Court should construe the words "such real estate" to be the real estate of which the debtor "retains possession".

THE OIL WELL.

Here we meet with an old friend, Radford's supposititious oil well. This oil well has had a checkered career (Brief, p. 39). It seems that Radford owns an undivided

one-half interest in one-half acre of land appraised at $150 (Rec., p. 87). So far as we know, there are no oil wells in Kentucky. But counsel for the petitioner are counsel for an oil company and doubtless know more about oil wells in Kentucky than we do. At any rate the oil well has not yet been discovered. The theory of counsel is that at some time within the next five years, oil may be discovered on this one-half acre of ground; that Radford may then elect, to buy the one-half acre of ground for $150; that because Louisville Joint Stock Land Bank does not have a mortgage on this one-half acre of ground, creditors could not demand a reappraisement thereof; hence that Radford could buy this unencumbered tract of land for $150, the amount of the original appraisement and (as was feared by the lienholder in the brief filed in the Circuit Court of Appeals, Radford might achieve a "handsome fortune", even to the extent of becoming a millionaire), while the Land Bank was vainly struggling to save its stockholders from a double liability by endeavoring to sell Radford's unencumbered property for that enhanced value which counsel for the lienholder sometimes prophecy and sometimes view with trepidation.

So because Radford may some day own an oil well, which has not yet been discovered, counsel argue that in the present tense, he may not save the roof over his head but instead become a recipient of public relief.

The true answer to all the contention about the oil well is that, if, as and when, this oil well is discovered, and Radford tries to buy a one-half interest in it for $150, the Court will properly decide that such a result is so unreasonable as to be in violation of the Fifth Amendment, and hence as to that particular result (if it be claimed that such a result is absolutely predestined, which counsel for Radford deny) the Frazier-Lemke Act may be held invalid.

An act of Congress may be in violation of the Fifth Amendment in some circumstances and not in others.

Nashville, etc., R. R. Co. v. Walters (recently decided by this Court).

Counsel for petitioner claim (Brief, p. 39):

> "There is no provision for a reappraisal of personal property pledged or unpledged."

What counsel really mean is that a lienholder on real estate only may not ask a reappraisal of personalty, not because such property is personalty, but because the lienholder has no lien on the personalty. But just as a trustee in bankruptcy is a lienholder as to all the realty owned by the debtor, so he is a lienholder as to all the personalty owned by the debtor; hence, may demand a reappraisal thereof.

Radford's personalty is not of a character likely to appreciate in value (Rec., pp. 87, 88). Certainly if personalty of a character which has substantially appreciated in value is sought to be reacquired by a debtor, and such debtor should claim he is entitled to so reacquire that personalty without reappraisement, and also claim that the trustee in bankruptcy is not a lienholder entitled to a reappraisement of all assets, the Court would properly rule that such a construction would make the law so unreasonable as to be invalid as to the right of a debtor to reacquire such personalty.

But why should Radford:

(a) Who is not seeking at present to acquire personalty; and

(b) Who admits that the trustee in bankruptcy, as a lienholder, is entitled to a reappraisement of personalty;

lose his farm because of possible changed circumstances in other cases not before the Court?

It must be remembered that "it is a Constitution" which the Court is expounding in this proceeding, an instrument dealing in generalities and not in particulars, an instrument which, in the very nature of things, cannot be expected to be reflected in legislation manifesting perfection, nor in legislation devoid of all conjectural possibilities (290 U. S. 443; 219 U. S. 67; 211 U. S. 450).

RETROACTIVE EFFECT OF FRAZIER-LEMKE ACT.

Complaint is made by the petitioner (Brief, p. 34) that Frazier-Lemke Act is retroactive only in that it applies "only to debts existing at the time this Act becomes effective", that is, June 28, 1934.

So far as Radford is concerned, his petition was filed before June 28, 1934. It does not appear that he has any creditors who became such after June 28, 1934, nor is there any intimation that any discrimination is being made in this proceeding between creditors who existed before June 28, 1934, or who existed after that date, for no creditors after that date are in existence.

Heretofore, the right of Congress to discriminate as between creditors existing prior to taking effect of an act and creditors thereafter coming into existence after the taking effect of the act, has been recognized.

Holt v. Henley, 232 U. S. 637.

Why is not the converse true?

Counsel reiterates its complaint, there is "no justifiable basis" for the distinction made in the act between

debts existing at the date of the act and debts thereafter incurred.

The basis for this distinction is that Congress was dealing with a condition, not a theory. The value of farm lands had decreased prior to June 28, 1934. It was not expected that any loans on farms would thereafter be made except upon a rising market.

Hence, there was no necessity for devaluing farm values below their value on June 28, 1934, or attempting to scale a debt incurred after that date.

Congress may classify the objects of legislation (186 U. S. 186; 95 Fed. 637, 647, 648; 7 Corpus Juris, p. 19, Sec. 9).

Counsel again invade the realm of the unreal. They imagine a farmer may have two mortgages, one executed prior to June 28, 1934, and one executed after that date (Radford's mortgages were executed, one in 1922 and one in 1924. Hence, the question mooted does not arise in this case).

But counsel imagine that if a farmer has two mortgages outstanding, one prior to June 28, 1934, and one after June 28, 1934, and he repurchases his farm under the Frazier-Lemke Act, the second mortgage has become a first mortgage. If this were so, how could the holder of the first mortgage, who has received all that is due him under the law, complain of that result?

But when a debtor is adjudicated a bankrupt, the title to all of his property passes to the trustee in bankruptcy (National Bankruptcy Law, Sec. 70). When the farmer buys the farm from the trustee, he is not redeeming from or discharging a mortgage; he is acquiring a new title to his property, free and clear of liens.

Just what the rights of a second mortgagee, whose security was given after June 29, 1934, would be is not

now present for decision. The question mooted is not involved in this proceeding.

It is probable, a second mortgagee whose rights accrued after June 28, 1934, might be entitled to have the security sold, subject to a first lien in favor of the mortgagee for the amount expended by him in re-acquiring the title to the security. As to the "complex discriminations" which may arise in other cases (Pet. Brief, p. 44), why should Radford lose his farm on that account?

For example, in Beeker v. Gill, 206 Fed. 36, a conditional sale was held void as to creditors whose claims arose intermediate the execution and the recording of the instrument.

See also—

Blake v. Meadows, 225 Mo. 1.

Suppose a debtor (Radford is not one of these) has two sets of creditors, one after June 28, 1934, and one before June 28, 1934, the creditors after June 28, 1934, are entitled to have the property of the debtor sold as if the Frazier-Lemke Act had not been enacted. If it is not possible in such circumstances to administer the property with due regard to each set of creditors, then the rights of creditors subsequent to June 28, 1934, being superior to creditors whose claims arose before said date, the property must be administered accordingly.

EQUAL PROTECTION OF THE LAW.

We are next told: "There can be no doubt that the denial of the equal protection of the laws constitutes lack of due process" (Brief, p. 46, note). We assume this statement is made with respect to an Act of Congress.

The equal protection of the laws is enjoined by the Fourteenth Amendment (U. S. Code, Ann., p. 285). This constitutional provision applies to the states and has

never been applied to an Act of Congress. Otherwise, how could a land bank claim immunity from income taxation?

The rule as to the equal protection of the laws "does not however forbid classification * * * provided, always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

Louisville Gas Co. v. Coleman, 277 U. S. 32, 37.

HEINER v. DONNAN, 285 U. S. 312.

This case is not controlled by any period of time. The controlling question was the right of Congress to enact a conclusive presumption that a gift was made in contemplation of death. The period of time was merely incidental to the main question involved. The Court in Heiner v. Donnan, said of the Schlesinger case: "The length of time was not a factor in the case." The law condemned in the Heiner case would be likewise vulnerable if made applicable without regard to a period of time.

Truax v. Carrigan, 257 U. S. 312, 332, cited by counsel for petitioners (Brief, p. 46), arose under the Fourteenth Amendment and presented a question of State, not Federal law.

Schlesinger v. Wisconsin, 270 U. S. 230, 240, is based on the statement: "There is no adequate basis for this distinction".

Bronson v. Kenzie, 1 How. 311, arose under the contract clause of the Constitution which as to private contracts, does not limit Congressional action.

186 U. S. 186.

The Gold Cases.

See, also, 290 U. S. 431, 432, 433, 465, 466, 467, 474, 481.

JUDICIAL DISCRETION.

Under the Minnesota Mortgage Moratorium Case, 290 U. S. 398, 442, the length of the stay need not be five years. The Court may end the stay at any time its continuance appears to be arbitrary and unreasonable.

There is no requirement in the Act that "the debtor must be discharged upon the payment of the appraised value of the property". The language of the Act (paragraph 7) is that "the debtor may apply for his discharge."

The bankrupt under paragraph 2 is required to agree to buy his farm, if he so elects. He thus becomes individually responsible for the payment of the purchase price as fixed by the Court. This responsibility may be enforced in any manner incident to the enforcement of such agreements.

As to "abandoning his property," no judicial power can build a wall around a farm and prevent its abandonment. If by "abandonment" is meant a breach of the contract to purchase, all the known remedies of the law are available to enforce such contract.

We are told: "The only discretion left to the Court is to confirm the value fixed by the appraisers and to approve a 'reasonable' rental for the land of which the debtor retains possession" (Brief, p. 49).

The report of the appraisers is merely advisory. Else, where did the lienholder obtain a right to attempt to fix such value by a meaningless gesture to buy land and pay for it in worthless paper?

The supervisory power of the Court with respect to the report of a referee is very broad (53 Corpus Juris, p. 785, Sec. 264), "* * * the acceptance or rejection of the report may be matter of discretion" (*Ibid*, p. 786, Sec. 266).

The ascertainment of compensation for property taken by the government is a judicial function (262 U. S. 341, 343, 344).

Hence the ascertainment of the value of Radford's farm is a judicial function. Both the referee in bankruptcy and the District Judge so regarded in the case at bar. Lienholder filed no written objections to the report of the appraisers. Lienholder introduced no evidence of the value of the farm, though afforded an opportunity to do so. Counsel for Radford gave and is still willing to give the lienholder every conceivable opportunity to prove the value of the farm, if such opportunity be requested.

As to the rental value of the farm not taking "into consideration any other assets which the farmer happens to own"; how can the existence of these "other assets" affect the value of the farm?

We are next referred to the alleged "inflexible denial to the creditor of any remedy in a Federal or State Court for five years * * *" (Brief, p. 50):

(a) The five years' period, as already stated ends when the Court so decrees.

(b) If the farmer fails to pay the rent as fixed by the Court, the lienholder may foreclose the mortgage.

EMERGENCY.

Counsel (Brief, p. 51) analyze the Minnesota statute upheld in the Blaisdell case. That statute, passed by Minnesota according to counsel:

(a) Did not impair the integrity of the mortgage indebtedness (Congress is not so limited);

(b) The obligation for interest remained (It remains under the Frazier-Lemke Act unless the debtor is granted

a discharge. In that event it shares the fate of other indebtedness of the farmer);

(c) The right of a mortgagee-purchaser to title in fee was not affected (If redemption be had under the Minnesota statute, the title revested in the mortgagee):

(d) The right to a deficiency judgment failing redemption remained (Such a right is dischargeable in bankruptcy);

(e) The rental was devoted to the required payments of taxes, insurance and interest on the mortgage indebtedness. (The mortgagee in the instant proceeding receives the proceeds of the rental and may devote them to any purpose it sees fit);

(f) As to the temporary nature of the relief granted by the Frazier-Lemke Act, consult 290 U. S. 442.

As to the failure of Frazier-Lemke Act to declare an existing emergency:

(a) Such declaration, if made, would not have been binding on the Court (290 U. S. 398, 442);

(b) The exercise of a power is referable to the authority thereof (49 Corpus Juris, p. 1289, Sec. 123).

That is, when a legislative body exercises a power justified by the existence of an emergency, such exercise is regarded as the execution of such power.

As to the contention "* * * no power is vested in any Court to determine whether the emergency was passed"; the power just mentioned is constitutional in its origin (290 U. S. 442).

At one point in their brief counsel for petitioner contend:

(a) A federal moratorium is void; because unreasonable in that:

(b) 29 States (not including Kentucky, in which Radford's land is situate) have passed moratorium acts.

To which we say:

The constitutional power of Congress to establish a uniform law on the subject of bankruptcies is not limited by the extent of state action on the same subject (Consult State's Rights, *ante*, p. —).

The 29 moratoriums constitute evidence of the necessity for their enactment.

CONCLUSION.

Under Sections 77 and 77B, corporations remain in possession of their property not by the payment of cash, but through the issuance of securities in altered form in reduced amounts.

Under Section 75, a farmer remains in possession of his property by the payment of cash.

How can it be, the former valid, and not the latter?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 717.

LOUISVILLE JOINT STOCK LAND BANK, - *Petitioner,*

v.

WILLIAM W. RADFORD, SENIOR, - - *Respondent.*

RECOMMENDATION

—BY—

EDWIN A. KRAUTHOFF.

Now this day comes Edwin A. Krauthoff in pro. per., and files this document by way of recommendation herein.

(In explanation of the form which this document has assumed, the following is submitted: Originally Mr. Krauthoff and the debtor, Mr. Radford, entered into an arrangement whereby Mr. Krauthoff was authorized to act as counsel herein for Mr. Radford, with plenary powers. So far as Mr. Krauthoff is advised, that arrangement has not been terminated. In order, however, to simplify the situation, and to prevent any controversy that might arise in the event that an effort be made to revoke such authority, Mr. Krauthoff submits this document in pro. per., in the form of a recommendation.)

I.

The first recommendation is that the Court accept as controlling authority herein, the decision of this Court (April 1, 1935), Continental Illinois Nat. Bk. & Tr. Co. v. Chicago, Rock Island & Pacific Ry. Co., and accordingly uphold as constitutionally valid, the Frazier-Lemke Act so far as the type and character thereof and its underlying principle are concerned. See, also, 75 Fed. (2d) 894, 897, 947.

II.

As to the application of the Fifth Amendment to this proceeding:

The Fifth Amendment does not provide that an Act of Congress, which in circumstances not yet arisen as to a person who may or may not be a party to the proceeding at issue, may deprive him of his property without due process of law, is for that reason invalid as to everybody and in all circumstances. The Fifth Amendment deals with particulars and not generalities, with the logic of events, and not the doctrine of imaginary possibilities.

> "A statute valid as to one set of facts may be invalid as to another. A statute valid when enacted may become invalid by change in the conditions to which it is applied."
>
> Nashville, etc., Ry. Co. v. Walters (March 4, 1935), 55 Sup. Ct. 486, 488.

Consult I Kings 8:59.

Tested by this standard, the only question arising on the record herein is the propriety of the action of the District Court in granting to Mr. Radford a tenancy for a definite period, of the farm once owned by him upon the terms fixed by the District Court, for that is the only action taken by the District Court in this case.

Upon further study and reflection, the author of this document has been impelled to conclude, that under the precise language of the Frazier-Lemke Act as passed, the action of the District Court in permitting Radford without the consent of Louisville Joint Stock Land Bank to become a tenant of the farm once owned by him, is not warranted by the terms of the statute as written, but is sustainable on other grounds.

Turning to the Frazier-Lemke Act, we find that the statutory right of Mr. Radford to repurchase the farm once owned by him must be predicated of an agreement on his part to do so.

In the opening sentences of the Frazier-Lemke Act (Subdivision (s), Section 75, National Bankruptcy Act, approved June 28, 1934), a provision is found:

> "Such farmer" (that is a farmer who has failed to obtain the acceptance of a majority in number and amount of all his creditors whose claims are affected by a composition or extension proposal and who thereafter has been adjudicated a bankrupt), "may petition the court that all of his property * * * be appraised * * * and that he be allowed to retain possession * * *

of his property and pay for same under the terms and conditions set forth in this subsection (s)."

Paragraph (1) of Subsection (s), Frazier-Lemke Act, then provides for the appointment of appraisers and the making of an appraisal.

Paragraph (2) of the Act just cited, provides for the entry of an order of a possessory nature on the part of the debtor. But inasmuch as this possession is "subject to and inferior to all liens," which "shall remain in full force and effect," it is evident that paragraph (2), just cited, gives no right of repurchase to the debtor, but merely a limited right to a possession of his estate.

To understand paragraph (3) of the Frazier-Lemke Act as enacted, we must read the paragraph in the form it assumed as Mr. Lemke introduced the bill. As thus drafted, the paragraph began in this wise; "Upon request of the debtor, the trustee * * * shall agree to sell to the debtor," all or part "of the bankrupt estate at the appraised value," not inserting the words thereafter added by amendment, "and with the consent of the lienholder or lienholders."

As thus written, it is clear:

(a) Originally, paragraph (3) of the Frazier-Lemke Act was self-executing and did not depend upon the consent of the lienholder for its operative force and effect.

(b) Paragraph (3) of the Act as introduced and passed, contemplates an agreement by the trustee to

sell, consequently of the debtor to buy, and contains no element of an option to the debtor to purchase.

See authorities, *infra.*

Paragraph (4) of the Act then states: "An agreement having been reached as provided in Subsection (3);" so that paragraph (4) recognizes:

(a) The agreement to sell by the trustee and to buy by the debtor, depends on paragraph (3) of the Act;

(b) The "manner of payments and distribution of debtor's property" under the Act depends in the alternative specified in paragraph (7) thereof (that is, a written objection by a secured creditor), either upon paragraph (3) or paragraph (7).

As thus written, the Act was intelligible and if so enacted would have been operative.

But in the stress and strain of the closing days of Congress, the words "with the consent of the lienholder or lienholders" were inserted in the opening part of paragraph (3) of the Act, in the House of Representatives after it had passed the Senate by an amendment not offered by Mr. Lemke, and were then agreed to in conference.

Judge Lindley, *In Re* Miner, 9 Fed. Supp. 1, discusses the effect of the language of Congress in thus amending the bill, and in the judgment of the author of this document (reached after many efforts to demonstrate a contrary result), this Court is compelled to adopt the reasoning of Judge Lindley in that particular.

The effect of Judge Lindley's ruling may be thus summarized:

(a) Paragraph (3) of the Act depends for its operative force and effect upon the consent of the lienholder.

(b) The operative force and effect of paragraph (7) of the Act, is hypothesized of a written objection by the lienholder to the manner of payments and distribution of the debtor's estate provided in paragraph (3) of the Act.

(c) In the absence of a consent under paragraph (3) of the Act and of a written objection under paragraph (7) of the Act, neither paragraph operates and no relief is accorded to the debtor thereunder.

In this connection, it must be remembered that upon the adjudication of Mr. Radford, as a bankrupt, the title to his farm passed from him to the trustee in bankruptcy of the estate.

National Bankruptcy Law, Sec. 70.

Under Section 70(a), National Bankruptcy Law, the trustee is vested with the title of the bankrupt as to all non-exempt property owned by him.

Gilbert's Collier on Bankruptcy (3d Ed.), p. 1166, Sec. 1448.

And before the title of the trustee revests in the debtor there must be a statute containing operative words of conveyance.

In order to convey by grant, the grantor must use apt and proper words to convey to the grantee.

Agricultural Bank v. Rice, 4 How. 225.
16 Century Digest, Col. 57, Sec. 55.

So that by the adjudication, the title to his farm having passed from the debtor to the trustee in bankruptcy of his estate, the debtor, in order to succeed under the Frazier-Lemke Act in regaining the title to the farm once owned by him, without the cooperation of the lienholder thereon, must point out, a provision of that Act in some manner entitling him to that right without such consent.

At one time it was thought that if the Court adopted the Miner case as the law of this case, the Radford case would have become moot. But counsel are now of opinion that the fundamental question, is the Frazier-Lemke Act valid in principle and as to type, the Fifth Amendment still remains to be considered.

As already pointed out, the necessary operative words of conveyance to revest in the debtor the title which had passed to the trustee, are found in paragraph (3) of the Act and that paragraph does not operate without the consent of the lienholder. As the operative force and effect of paragraph (7) depends entirely upon paragraph (3), for no operative words of conveyance are found in paragraph (7), it is quite immaterial, so far as paragraph (7) is concerned whether or not an objection is filed as therein hypothesized.

So the Court must take the Miner case into account. As counsel is compelled, its correctness, then as the lienholder in the proceedings at bar did not consent to the operation of paragraph (3), the fact that it objected to the operation of paragraph (7) is immaterial.

If the Court adopts the reasoning of Judge Lindley, that the right of a farmer to repurchase his farm does not exist under the Frazier-Lemke Act unless the lienholder consents thereto (and the author of this document is reluctantly driven to the conclusion that such result is inescapable), no question under the Fifth Amendment arises in this proceeding.

For as written, under paragraph (3) of the Act, a trustee may not agree to sell all or part of an estate to the debtor without the consent of the lienholder.

Therefore, paragraph (3) of the Act, does not operate without the consent of the lienholder. A lienholder cannot complain of that to which he consents (*Volenti non fit injuria*). Hence it cannot be argued that paragraph (3) of the Act deprives a lienholder of his property without due process of law, for nothing may result from paragraph (3) of the Act, unless he does consent thereto.

As to *"Volenti Non Fit Injuria:"*

67 Corpus Juris, p. 270, note 4.
Broom's Legal Maxims (9 Ed.), p. 188.

> "A person may by his acts • • • waive a right which he might otherwise have under the Constitution of the United States."

I Cooley's Const. Lim. (8th Ed.), p. 368.
Pierce v. Somerset Railway, 171 U. S. 641, 648.

Shepard v. Barron, 194 U. S. 553, 567.
Pierce Oil Corporation v. Phoenix Refining Co., 259 U. S. 125.
Greene County v. Lydy, 263 Mo. 77, 87.

A corporation may not complain on constitutional grounds of a legislative provision to which it consented by becoming incorporated thereunder. International, etc., Ry. Co. v. Anderson County, 246 U. S. 424, 433.

As to the requirements, under paragraph (3) of the Act, that a trustee enter into an agreement to sell, hence the debtor enter into an agreement to purchase, before the right of the debtor arises to regain his title to the farm once owned by him, note:

An agreement means "a mutual assent (of two or more minds) to do a thing." An agreement indicates "a concurrence of minds."

> "A contract is an agreement between two or more parties for the doing or not doing of some specified thing."

The word agreement connotes a mutual obligation. 1 Words & Phrases (3rd Series), p. 374:

> "To constitute an agreement, there must be a proposal by one party and an acceptance by another, which must be manifested by some appropriate act.
>
> "An agreement contemplates a meeting of minds. One party may have intended to sell, the other party may have intended to buy, yet this would not be sufficient, unless the intention of each was in some way communicated from one to the

other, and was understood and agreed to by both.

"There is no difference between a 'contract' and an 'agreement.'"

1 Words & Phrases (2d Series), p. 171:

"Agreement necessarily embraces two parties in a contract of sale one to sell and one to buy" (17 Barb. 6, 260, 263).

In White v. Treat, 100 Fed. 290, 291, the words "agreement" and "contract" are deemed synonymous:

"* * * it is apparent that to a sale a buyer is as essential as a seller. No amount of offering to sell will make a contract of sale, until someone accepts the offer by agreeing to buy" (100 Fed. 291, Lacombe, Circuit Judge).

"Contract is the form of obligation which arises out of the agreement of the parties."

1 Page on Contracts, Sec. 41.

An agreement of a sale is a contract binding both parties to buy and sell.

Loud v. St. Louis Union Trust Co., 318 Mo. 592.

The distinction between an agreement to sell and an agreement to purchase is discussed: Keogh v. Peck, 316 Ill. 318, 38 A. L. R. 1151. Davis v. Roseberry, 95 Kan. 411, 3 A. L. R. 564 (note).

An option is not "an agreement to sell" (3 A. L. R. 566); conversely, an agreement to sell is not an option to purchase.

From the foregoing, we are impelled to conclude

that paragraphs (3) and (4) of the Frazier-Lemke Act contemplate an agreement on the part of the trustee to sell.

(Hence, an agreement on the part of the debtor to purchase), instead of an agreement on the part of the trustee to give the debtor an option to purchase.

Inasmuch therefore, as the tenancy of the debtor under paragraph (7) is predicated of an agreement of the debtor to purchase under paragraph (3), as paragraph (7) relates only to the "manner of payments and distribution," and as paragraph (3) is operative only with the consent of the lienholder, the tenancy of a debtor under the language of the Act, as written, depends entirely upon the consent of the lienholder; hence no question arises in this proceeding under the Fifth Amendment.

As applied to the facts of this proceeding, the inevitable result is that the debtor Radford is not entitled to retain his farm as a tenant under the provisions of the Act, as written. His right to relief herein therefore is dependent upon other considerations.

III.

The District Court in the proceeding herein pending, as a result of the filing of the petition by Mr. Radford for relief under Section 75, National Bankruptcy Act, is possessed of jurisdiction of the farm of the debtor without limitation as to the time in which previous proceedings may have been instituted in state courts.

The power of Congress under the bankruptcy clause of the Federal Constitution is supreme and displaces the effect of state action as to any subject within the jurisdiction of Congress and upon which it may have acted.

In re Watts v. Sachs, 190 U. S. 1.
Stellwagen v. Clum, 245 U. S. 605.
International Shoe Co. v. Pinkus, 278 U. S. 261.

The petition for debtor's relief by Radford, under the terms and provisions of Section 75, National Bankruptcy Law, as approved March 3, 1933, is governed *inter alia* by these provisions of that section:

"(n) The filing of a petition pleading for relief under this section shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the court, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition or answer was filed.

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court

or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court: * * *

"(2) Proceedings for foreclosure of a mortgage on land, * * *

"(p) The prohibitions of subdivision (o) shall not apply to proceedings for the collection of taxes, or interest or penalties with respect thereto, nor to proceedings affecting solely property other than that used in farming operations or comprising the home or household effects of the farmer or his family."

None of the subdivisions just quoted are found in the Frazier-Lemke Act. All are found in the Act of March 3, 1933, which Act, under the doctrine recognized in the Rock Island cases, decided by this Court, April 1, 1935, is clearly constitutional.

So, that, under the Act of March 3, 1933, followed by the adjudication in bankruptcy of Radford (clearly valid, 186 U. S. 186), the estate of Radford came within the plenary jurisdiction of the District Court as a Court of Bankruptcy. This jurisdiction is unlimited as to time or place. Note the language: (n) "property, wherever located." Note also, the four months period, an element of Section 67 (c), (e), National Bankruptcy Act, is not a part of Section 75, as approved March 3, 1933, nor of the Frazier-Lemke Act, approved June 28, 1934.

National Bankruptcy Law, as approved July 1, 1898, and Section 75 thereof, as approved March 3, 1933, were not written from the same standpoint and do not evidence the same intent or spirit, hence differ in their interpretation. The Act of 1898 was written to promote the interests of commerce and from the standpoint of the creditor. In business it is important a merchant know, within reasonable limits, the extent of obligations from day to day. For this reason, for example, his liability as an endorser must be fixed by protest on the day of the maturity of the paper he endorsed. So, by parity of reasoning, if such merchant be a preferred creditor, he should know within a reasonable time if such preference is to be challenged. So the four months period of limitation as to preferential transactions is written into the National Bankruptcy Law as approved July 1, 1898.

Indeed, it may be admitted, that if a valid (that is free from fraud) non-preferential transaction occur within four months, resulting in a creditor being secured in circumstances leaving no surplus for distribution among general creditors, the Bankruptcy Court would not concern itself with such assets; for the Act of 1898 is for the primary protection of general unsecured creditors and deals only incidentally with secured creditors.

A debtor filing a petition under the general Bankruptcy Law is not interested in the four months rule as to secured creditors. He is allowed a discharge from his debts without limitation as to time. The sub-

ject of a discharge is all that affects him under the Act of 1898. He is not concerned in the question of validity of securities from a preferential standpoint. His indebtedness is not altered by setting aside preferential transaction, for in that event, while prior unsecured creditors might receive dividends on their debts, the prior secured creditor would thereby find his indebtedness increased. The total indebtedness of the bankrupt is not affected by setting aside preferential transactions; only the manner of distribution of his assets.

But the Act of March 3, 1933 (Section 75), is written for the purpose of keeping an indebted farmer on a mortgaged farm, and if possible eventually, to restore such debtor to his possession (Lev. 25: 13). To such a one, the date of his mortgage is quite unimportant. The effect thereof only concerns him. To apply the four months rule to a farm mortgage in proceedings under Section 75, in effect, would nullify the law, for within four months prior to March 3, 1933, few farm mortgages were negotiated. In addition, a farm mortgage usually runs six months before a default may occur. So a farm mortgage executed within four months prior to a petition for debtor's relief filed under Section 75, as approved June 28, 1934, and which at the date of the petition might be in default, is practically non-existent.

Hence, the limitation of four months stressed in Straton v. New, 283 U. S. 318, is inapplicable to proceedings under Section 75.

In Cont. Ill. Nat. Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co. (April 1, 1935), 79 Sup. Ct. L. Ed. 642, the following rules of law on the subject of bankruptcies are announced:

(1) Courts of bankruptcy are invested "with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings."

(2) Courts of bankruptcy are "essentially courts of equity, and their proceedings inherently proceedings in equity."

(3) The power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is therefore inherent in a court of bankruptcy, as it is in a duly established court of equity."

(4) An injunction may issue from a Court of Bankruptcy suspending the enforcement of a lien upon collateral pending further action.

No question as to time was urged in the Rock Island cases. Indeed, the record will disclose the pledge in that proceeding was more than four months old.

Straton v. New, 283 U. S. 318, was approvingly cited in the Rock Island cases. In Straton v. New, the Court was dealing with a case arising under the general National Bankruptcy Act and where the lien, being enforced in a State Court, antedated the bankruptcy more than four months. It also ruled in Straton v. New: "And as the lien created by a judgment entered within four months is void, the court of bank-

ruptcy has jurisdiction to administer the property regardless of the lien and will restrain the prosecution of an action to enforce it."

But in Section 75, National Bankruptcy Law, approved March 3, 1933, the four months' provision found in the general law is omitted.

In re Jacobs, 7 Fed. Supp. 749.

As to the jurisdiction of a Court of bankruptcy of assets of the debtor subject to an outstanding lien, consult:

Lazarus v. Prentice, 324 U. S. 266.
Van Huffel v. Harkelroade, 284 U. S. 225.
Gross v. Irving Trust Co., 289 U. S. 342.
Taylor v. Sternberg, 79 L. Ed. 324.
5 Remington on Bankruptcy (3d Ed.), p. 447, Secs. 2365, *et seq.*

"The filing of the petition (in bankruptcy) is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. The exclusive jurisdiction of the bankruptcy court is so far *in rem* that the estate is regarded as *in custodia legis* from the filing of the petition."

Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300, 307.

In re Looker, 6 Fed. Supp. 571, executions against a debtor obtaining benefit of Section 74, issued within four months of filing petition were enjoined.

In re Doelger, 6 Fed. Supp. 776, it was ruled that on the filing of a petition under Section 74, "from that

time forward, the debtor's property is *in custodia legis.*"

In re Burgh, 7 Fed. Supp. 184, it appeared that a trustee had been appointed for property in a State Court in 1932. The Court ruled, with respect to Section 74: "* * * it seems clear to the Court that it was the intention of Congress * * * to commit to the courts of bankruptcy exclusive jurisdiction over the debtor and his property wherever located, whether the property be subject to liens or otherwise;" hence the Court may appoint a custodian or receiver "of all of the debtor's property including that which is subject to liens."

In re Jacobs, 7 Fed. Supp. 749, a receiver was appointed in a State Court in 1932. On June 25, 1934, a debtor filed his petition under Section 74. Judge Lindley discussed the four months distinction theretofore prevailing. An extensive quotation was made from Isaac v. Hobbs Tie & Timber Co., 282 U. S. 734.

Judge Lindley ruled that the four months' limitation under the general bankruptcy law did not apply to proceedings under Section 74. "* * * the four months period as fixed by Congress was an arbitrary date and not one in any way limited by the Constitution," hence "when Congress saw fit to extend the time, it made all cases decided under the statutory four months provision applicable to the situation existing under the present amendment" (7 Fed. Supp. 754).

In re Bradford, 7 Fed. Supp. 665, Judge Chesnut held it within the power of the Federal Court to stay

a mortgage foreclosure instituted April 17, 1934, unless Subsection (s) was unconstitutional. See opinion in that case, 4 C. C. A., printed in full in Mr. Lemke's second brief in this case.

In re Miner, 9 Fed. Supp. 1, 11, Judge Lindley sustained the jurisdiction of the bankruptcy Court under Section 75 as against a pending foreclosure.

In re Klein, 9 Fed. Supp. 57, it was ruled that a bankruptcy Court had exclusive jurisdiction of an equity of redemption in effect at the date of the petition.

See also, *In re* Duffy, 9 Fed. Supp. 166, 169.
In re Kalina, 9 Fed. Supp. 170.
In re Rank, 9 Fed. Supp. 171.
In re Dickinson, 9 Fed. Supp. 419.
Jurisdiction was exercised, *In re* Hanley, 9 Fed. Supp. 463.
See also, *In re* O'Brien, 9 Fed. Supp. 892.
In re Granada Hotel Corporation, 9 Fed. Supp. 909.
In re Natural Dry Ginger Ale Corporation, 9 Fed. Supp. 1003.
In re Nelson, 9 Fed. Supp. 657.
Eaves v. Gleen, 9 Fed. Supp. 647.
In re Nineteenth & Walnut Streets Corporation, 9 Fed. Supp. 625.

In re Belber, 7 Fed. Supp. 762, a pledge was denied leave to sell a pledge on the ground: "Under so-called 'market conditions,' this stock has no value other than what the pledgee will let it go for." Affirmed, 72 Fed. (2d) 542.

See also:

In re McMurray, 8 Fed. Supp. 449.

Federal Land Bank v. Kurtz, 70 Fed. (2d) 46.
Re Lake County Fuel Supply Co., 70 Fed. (2d) 391.
Rubenstein v. Nourse, 70 Fed. (2d) 482.
Kimmel v. Crocker, 72 Fed. (2d) 599.
In re Faour, 72 Fed. (2d) 719.
Irving Trust Co. v. Fleming, 73 Fed. (2d) 423, 427.
In re Monsen, 74 Fed. (2d) 411.
In re Sterba, 74 Fed. (2d) 413.
In re Fox Metropolitan Play Houses, 74 Fed. (2d) 722.
In re Greylings Realty Corporation, 74 Fed. (2d) 734.
Hamilton Gas Co. v. Watters, 75 Fed. (2d) 176.
In re Kusel, 75 Fed. (2d) 314.
In re Martin, 75 Fed. (2d) 618.

Inasmuch as the District Court in the proceeding at bar herein had exclusive and plenary jurisdiction of the farm of Mr. Radford, it had jurisdiction to sell that farm clear of the lien thereon, and transfer the lien on the farm to the proceeds derived from the sale thereof.

Van Huffel v. Harkelroade, 284 U. S. 225.

But in selling the farm and transferring the lien on the farm to a lien on the proceeds, the bankruptcy Court is exercising jurisdiction of an equitable nature.

Consult, The Rock Island cases, decided by this Court, April 1, 1935.

1 Remington on Bankruptcy (4th Ed.), p. 51, Sec. 23.

The enforcement of a lien in a Federal Court is an exercise of the power of a Court of equity (184 Fed. 199, 202).

A Court, in exercising the jurisdiction of a Court of equity in foreclosing an equity of redemption, acts by grace and not by right, as a Court of conscience and not of dispossession, does not permit a lienholder to "behave itself unseemly," nor seek its own, but rather to bear all things, to endure all things (I Cor. 13).

Accordingly, we are reminded that several centuries ago, a form of mortgage prevailed in England whereby a mortgagor conveyed the title to the security in fee to the mortgagee, subject only to a defeasance in the event the debt was paid on the law day in the amount and manner specified in the mortgage. In the face of direct provisions in the mortgage to the contrary, the Chancellor discovered the equity of redemption which gave to a mortgagor who had not complied precisely with the conditions of the mortgage, the right to redeem therefrom and to regain that which had formerly belonged to him.

19 Ruling Case Law, p. 500, Secs. 296, *et seq.*, p. 516, Sec. 316.
Eaton on Equity, p. 445, Secs. 214, *et seq.*
Reeves, Illinois Law and Mortgages, p. 3, Sec. 2.

The circumstances in which a Court of equity discovered the equity of redemption and displaced the common law theory of mortgages, are discussed.

Clark v. Rayburn, 8 Wall. 318.
41 Corpus Juris, p. 275, Sec. 2.

Then as a development of the equity of redemption the Chancellor accorded to the mortgagee as an act of grace, and not of right, a foreclosure of the equity of redemption by fixing a time in which the privilege of redemption should be exercised, or in default thereof, the property be sold and the right of redemption "foreclosed" or cut off.

19 Ruling Case Law, p. 519, Sec. 319.

A striking example of the doctrine, the power of a Court of equity in foreclosing mortgages includes the power to inclose reasonable conditions upon the exercise of the power is the case of Fasdick v. Schall, *infra*.

A Court of equity has declared that in certain circumstances, unsecured claims are entitled to priority over mortgage debts.

10 Enc. U. S. Supp. Ct. (Michie Law Book Co.), pp. 571, *et seq.*

A mortgagee must "do equity in order to get equity."

Fasdick v. Schall, 99 U. S. 235, 253.
Union Trust Co. v. Souther, 107 U. S. 591, 594.
I Tardy's Smith on Receivers (2d Ed.) p. 1143, Secs. 413, *et seq.*
23 Ruling Case Law, p. 110, Sec. 120.
Burnham v. Bowen, 111 U. S. 776, 780.
Kneeland v. American Loan & Trust Co., 136 U. S. 89, 97.
Virginia, etc., Coal Co., v. Central Railroad, etc., Co., 170 U. S. 355, 365.
Southern Ry. Co. v. Carnegie Steel Co., 176 U. S. 257, 282.
Gregg v. Metropolitan Trust Co., 197 U. S. 183 (no diversion of income shown).

In Kansas City Terminal Ry. Co. v. Central Union Trust Co., 271 U. S. 445, this Court discussed the power of a Court of equity, in confirming a sale under foreclosure of a mortgage, to require terms and conditions, reasonable in their nature to be inserted in the decree of confirmation.

As to the power of a Court to impose terms as to a plan of reorganization in case of the foreclosure of a mortgage on a railroad:

North American Co. v. St. Louis & S. F. Ry. Co., 28 Fed. (2d) 174.
Central Union Tr. Co. v. Mo. K. & Tex. Ry. Co., 28 Fed. (2d) 176.
Kansas City Ter. Ry. Co. v. Central Union Trust Co., 28 Fed. (2d) 177.

Volume 7, Legal Topics: "Some Legal Phases of Corporate Financing, Reorganization and Regulation."

Under Section 2, clause 5, National Bankruptcy Law, courts of bankruptcy may "authorize the business of bankrupts to be conducted for limited periods by * * * trustees, if necessary, in the best interests of the estate."

1 Remington on Bankruptcy (4th Ed.), p. 554, Sec. 445.

The trustee in bankruptcy therefore should be authorized to conduct the business of Radford, as a farmer, to be conducted by renting the farm in question to Radford "for a limited period" (a relative term).

The extent of the present economic distress prevailing among farmers is disclosed in the original brief filed on the part of the debtor by Mr. Lust and Mr. Krauthoff (large white book).

The fact that 29 States have passed moratoriums (consult appendix, brief for petitioner), is also a striking evidence of the necessity of a reasonable forbearance in the foreclosure of a mortgage on a farm.

The value of farm lands is stabilized by the withholding of excessive foreclosures of farms. The daily press reports substantial improvement in farm values. The Frazier-Lemke Act has played its part in accomplishing this result. A court of equity should be not less diligent in protecting the "vine and fig tree" of an American farmer (Micah 4:4).

As an example of the power of a court of equity in granting relief of an equitable nature in the foreclosure of a mortgage, note.

Equity enforces just rights where the law is inadequate.

21 Corpus Juris, p. 195, Sec. 184, note 52.

In Clark v. Rayburn, 8 Wall. 318, it was held a decree of foreclosure which allowed no time for the payment of the debt could not be sustained:

> "* * * it was always an incident of the remedy that the mortgagor should be allowed a specified time for the payment of the debt. This was fixed by the primary decree, and it might be extended once or oftener at the discretion of the

Chancellor, according to the circumstances of the case."

See, also, Chicago, etc., R. R. Co. v. Fasdick, 106 U. S. 71.
3 Jones on Mortgages (8 Ed.), p. 480, Sec. 2031.

Indeed the glory of the jurisprudence known as equity is its flexibility and adaptability to circumstances as they may present themselves (I Kings 8:59).

Eaton on Equity, p. 11.
21 Corpus Juris, p. 660, Sec. 845.

1 Pom. Eq. Jur. (4 Ed.), p. 122, Sec. 109; pp. 212, 213: Equity "has the power of expansion and of application to an unlimited variety of circumstances, which enables equity to keep abreast with the progress and changing wants of society."

The origin of the doctrine of an equity of redemption as evidenced, as early as the reign of Charles I of England by the entry of a decree to the effect that "the mortgagor had an 'equity to redeem' on payment within a reasonable time of principal, interest and costs, notwithstanding the forfeiture at law."

Eaton on Equity, p. 447, Sec. 215.

As already pointed out, a mortgage was originally self-enforcing. Failure of the mortgagor to pay the debt at the law day of its maturity of itself without more perfected the title of the mortgagee. His remedy thereafter, in the event the mortgagor was in possession of the premises was ejectment of the former owner.

In that state of the law, one braver than his fellows, having failed to pay a mortgage debt on the law day, appealed to the King as the source of all law for relief.

That adviser of the King was an ecclesiastic. Naturally, having studied Isaiah, this ecclesiastic, one of the early chancellors, thought in terms of redemption. Hence as he hoped for redemption of his soul, the chancellor could not do less when it came to redemption from a mortgage.

The spirit which discovered redemption also discovered foreclosure. Inasmuch as the chancellor accorded a debtor redemption, and inasmuch as fundamentally, there could not be one law for the true followers of God and another one for the stranger, the chancellor decreed it to be fair and just that a mortgagor should not be permitted to enjoy twenty years in which to redeem from a mortgage theretofore ripened into a title in fee simple. On the contrary, the chancellor foreclosed or cut off the equity of redemption by fixing a time in which the redemption should take place.

So jealously did courts of equity guard the equity of redemption that to this day an equity of redemption may not be released by a mortgagor by way of inclusion thereof in the mortgage, but only by way of subsequent agreement based upon a new consideration.

Clark v. Rayburn, 8 Wall. 318.
Eaton on Equity, p. 448, Sec. 215; p. 469, Sec. 229.
19 Ruling Case Law, p. 502, Sec. 298.

Reeves Illinois Law of Mortgages, pp. 11, 12, Secs. 7, 8.
41 Corpus Juris, p. 275, Sec. 2.

The doctrine of mortgage foreclosure thus originating in the thought of redemption, then unfolding by a recognition of the justice of foreclosure, progressed by adding the incident of sale of the mortgaged property under a decree of foreclosure.

The time for the entry of this decree rested in the sound discretion of the chancellor.

For example, in Blair v. Chicago, 201 U. S. 400; a Court did not foreclose a mortgage on a street railway without first determining the relations of a mortgagor and a municipality.

In Trustees v. K. C. M. & O. Ry. Co., 26 Fed. (2d) 876, a railway was administered in receivership for fourteen years in order to give the parties in interest an opportunity to reorganize the road.

In the litigation, a phase of which is reported as Gibson v. Continental, etc., Trust & Sav. Bank, 26 Fed. (2d) 872, a street railway was not sold under mortgage until the company had procured a new franchise from the city. The receivership extended from 1920 to 1926.

In Baldwin Locomotive Works v. Missouri, Oklahoma & Gulf Ry. Co., Judge Hook directed a plan of reorganization be prepared before the road be sold under foreclosure. The receivership began in 1913. The decree of foreclosure was entered in 1919.

In the case of The Missouri, Kansas & Texas Ry. Co. (consult Kansas City Terminal Ry. Co. v. Central Union Trust Co., 271 U. S. 445, 28 Fed. (2d) 176, 177), the road was in receivership over seven years.

In the case of Kansas City Joint Stock Land Bank, a receiver was appointed in May 1926. The lien of the bondholders of that company on the assets pledged as security for their bonds was not foreclosed until 1930.

In the Rock Island Cases (April 1, 1935), this Court recognized the propriety of affording a railway system a reasonable opportunity in which to reorganize its financial structure.

In the brief of Reconstruction Finance Corporation filed in that case will be found a collection of instances as to the length of time allowed to railway companies before decrees of foreclosure are entered.

Courts of equity have decided:

(1) An appointment of a receiver in a suit to foreclose a mortgage is an act of grace on the part of the Court and not enforceable as a contract right.

19 Ruling Case Law, p. 562, Sec. 370.
23 Ib., p. 10, Sec. 4.
2 Reeve Illinois Law of Mortgages, p. 610, Sec. 534.

(2) Rents pending expiration of redemption period are not impoundable at the instance of a mortgagee as a matter of right.

2 Reeve Illinois Law of Mortgages, p. 636, Sec. 551.

(3) A decree of foreclosure should allow a reasonable time in which the debtor may pay the amount found due on the lien being enforced.

8 Wall. 318.
2 Reeve Illinois Law of Mortgages, p. 731, Sec. 649; p. 733, Sec. 651; p. 747, Sec. 666.

"Mortgage sales will be controller by the court so that no injustice will be done either party."

19 Ruling Case Law, p. 570, Sec. 381.

(4) The lien of the security being foreclosed may be displaced by allowing preferential claims;

1 Tardy's Smith on Receivers (2 Ed.), p. 1143, Sec. 413;

And by the issuance of receiver's certificates.

2 Tardy's Smith on Receivers (2 Ed.), p. 1575, Sec. 541.

(5) A court of equity may fix an upset price to be bid at the sale it orders made.

(6) On a bill to redeem, time is allowed in which to make the redemption.

2 Jones on Mortgages (8 Ed.), p. 904, Sec. 1413.

(7) A court of equity may refuse to confirm a sale made under its decree.

19 Ruling Case Law, p. 581, Sec. 394.

(8) A court of equity may enforce conditions, such as a fair and reasonable plan of reorganization as the price of the decree of sale and confirmation thereof (28 Fed. (2d) 177).

(9) A court of equity may protect a title acquired by virtue of its decree (221 Fed. 545).

Equity is a progressive science. Twenty-nine states have declared a moratorium (Appendix Petitioner's Brief, 290 U. S. 398). Congress clearly attempted to do so in the Frazier-Lemke Act. Can equity do less?

In this connection, it may be intimated, that refinancing a farm and refinancing a railroad do not present the identical problem and are not governed by the same rule. But the reverse of this statement is true. "A time there was" ere our Nation's financial "griefs began" when we enjoyed an individualistic concept of life and living. The logic of events, which as Mr. Frederic R. Condert has observed, is more powerful than the logic of Aristotle, has replaced neighborly helpfulness, whereby one man loaned to another, and loaning oft did not "lose both loan and friend," by an organized system of loaning money on the security of farm mortgages. Farmers desiring to borrow money in these strenuous times, as a practical proposition, have but one source of supply, Federal Farm Mortgage Corporations. All other sources of farm credit on real estate security for the time being are dried and sterile. The record does not show how much money Radford can borrow from such institutions, nor whether or not the Louisville Joint Stock Land Bank will accept in discharge of the debt due it, the money which Radford may be able to borrow in the manner stated.

Mr. Radford can only refinance his farm indebtedness through a system now in existence or one hereafter organized. The problem of the debtor in this proceeding requires time for its solution. A court of equity which gives time to a railroad in which to reorganize its financial structure cannot do less for the "embattled farmers," fit descendants of those who at Concord, "fired the shot heard round the world" and the ashes of whose kindred mingle with the soil of France.

Cox v. Wood, 247 U. S. 3.
Selective Draft Law Cases, 245 U. S. 366.

Consult brief of John W. Davis, 245 U. S. 368.

Congress is endeavoring to remedy the situation (Senate Bill No. 2416, Rep. No. 498). A like bill is pending in the House of Representatives introduced by Mr. Lemke (H. R. 5452). Pending congressional action, this Court should preserve the *status quo* of farm indebtedness and prevent foreclosures of farm mortgages, under such terms and conditions as may be just and reasonable.

CONCLUSION.

The following recommendations are submitted for the consideration of the Court:

(1) That the Court, at this time, for the information and guidance of all parties in interest reaffirm the doctrine of the Rock Island cases, and hold that the underlying principle and dominant theory of the

Frazier-Lemke Act, relief to the debtor as well as protection to the creditor ("equal and exact justice to all men") be sustained as constitutional.

(2) That the Court restore the case to the docket for reargument on the following propositions:

(a) The effect of the doctrine of the Miner case upon the Frazier-Lemke Act;

(b) The inherent power of a Court of bankruptcy to impose equitable terms in the foreclosure of a mortgage upon property and its jurisdiction of mortgaged property owned by the debtor.

Or in the alternative:

(a) That the Court point out to Congress the effect of its action in making the operative force and effect of paragraph (3) of the Frazier-Lemke Act depend upon the consent of the lienholder.

(3) That the proceeding be remanded to the District Court with authority in that Court, to protect the debtor in the possession of his farm, pending a reorganization of the farm loan system of America and Congressional action, upon such terms and in such manner as to that Court may deem just and reasonable.

(4) That the debtor be accorded such other and further relief as to the Court may seem just and equitable.

EDWIN A. KRAUTHOFF,
Pro Se.

SUPREME COURT OF THE UNITED STATES.

No. 717.—October Term, 1934.

Louisville Joint Stock Land Bank, Petitioner, vs. William W. Radford, Sr.	On Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[May 27, 1935.]

Mr. Justice Brandeis delivered the opinion of the Court.

This case presents for decision the question whether sub-section (s) added to § 75 of the Bankruptcy Act[1] by the Frazier-Lemke Act, June 28, 1934, c. 869, 48 Stat. 1289, is consistent with the Federal Constitution. The federal court for western Kentucky (8 F. Supp. 489) and the Circuit Court of Appeals for the Sixth Circuit (74 F. (2d) 576) held it valid in this case; and it has been sustained elsewhere.[2] In view of the novelty and importance of the question, we granted certiorari (294 U. S. —).

In 1922 (and in 1924) Radford mortgaged to the Louisville Joint Stock Land Bank a farm in Christian County, Kentucky, comprising 170 acres, then presumably of the appraised value of at least $18,000.[3] The mortgages were given to secure loans aggregating $9,000, to be repaid in instalments over the period of

[1] Section 75 had been added to the Bankruptcy Act on March 3, 1933, by c. 204, 47 Stat. 1470.

[2] Bradford, Jr. v. Fahey, — F. (2d) — (4 C. C. A.); In re Cope (D. C. Colo.), 8 F. Supp. 778; Galloway v. Union Trust Co. (D. C. E. D. Arkansas), 9 F. Supp. 575; In re Plumer (D. C. S. D. Cal.), 9 F. Supp. 923; In re Cyr (D. C. N. D. Ind.), 9 F. Supp. 697; In re Jones (D. C. W. Mo.), 10 F. Supp. 165. Compare In re Bradford, 7 F. Supp. 665, rev. in Bradford, Jr. v. Fahey; In re Moore, 8 F. Supp. 393; Paine v. Capital Freehold Land & Trust Co., 8 F. Supp. 500; In re Miner, 9 F. Supp. 1; In re Duffy, 9 F. Supp. 166; In re Doty, 10 F. Supp. 195; In re Payne (D. C. Tex., May 9, 1935) (holding the Act unconstitutional).

[3] The Bank was organized under the Federal Farm Loan Act of July 17, 1916, c. 245, 39 Stat. 360. Section 12 of the Act provided that loans should not exceed 50 per cent of the value of the land mortgaged and 20 per cent of the value of permanent insured improvements thereon. The Bank loaned the Radfords $8,000 in 1922 and an additional $1,000 in 1924. The stocks and bonds of the Bank are privately owned. The bonds "being instrumentalities of the Government of the United States" are tax exempt. Compare Smith v. Kansas City Title Co., 255 U. S. 180; Federal Land Bank of New Orleans v. Crosland, 261 U. S. 374; Act of May 12, 1933, c. 25, § 29, 48 Stat. 46.

34 years with interest at the rate of 6 per cent. Radford's wife joined in the mortgages and the notes. In 1931 and subsequent years, the Radfords made default in their covenant to pay the taxes. In 1932 and 1933, they made default in their promise to pay the instalments of interest and principal. In 1933, they made default, also, in their covenant to keep the buildings insured. The Bank urged the Radfords to endeavor to refinance the indebtedness pursuant to the provisions of the Emergency Farm Mortgage Act, May 12, 1933, c. 25, 48 Stat. 41.[4] After they declined to do so, the Bank having declared the entire indebtedness immediately payable, commenced, in June, 1933, a suit in the Circuit Court for Christian County against the Radfords and their tenant to foreclose the mortgages; and, invoking a covenant in the mortgage expressly providing therefor, sought the appointment of a receiver to take possession and control of the premises and to collect the rents and profits.

The application for the appointment of a receiver was denied, and all proceedings in the suit were stayed, upon request of the Conciliation Commissioner for Christian County appointed under § 75 of the Bankruptcy Act, as he stated that Radford desired to avail himself of the provisions of that section. Proceeding under it, Radford filed, in the federal court for western Kentucky, a petition praying that he be afforded an opportunity to effect a composition of his debts. The petition was promptly approved and a meeting of the creditors was held. But Radford failed to obtain the acceptance of the requisite majority in number and amount to the composition proposed. Then, the Bank offered to accept a deed of the mortgaged property in full satisfaction of the indebtedness to it and to assume the unpaid taxes. Radford refused to execute

[4] That Act empowered the Federal Land Banks and the Land Bank Commissioner to lend farmers 75 per cent of the normal value of their land, at 4½ per cent interest for the first five years and 5 per cent thereafter; no repayment of principal to be required for 5 years. Act of May 12, 1933, c. 25, §§ 24, 32, 48 Stat. 43, 48; Act of June 16, 1933, c. 98, § 80, 48 Stat. 273; Act of Jan. 31, 1934, c. 7, § 10, 48 Stat. 347. Mortgage loans made to farmers by the institutions subject to the Farm Credit Administration outstanding June 30, 1934, aggregated $2,029,305,081. As of March 31, 1935, the loans had been increased to $2,661,558,017. Farm Credit Administration, Monthly Reports on Loans and Discounts, March, 1935. "The proceeds of the loans closed [in 1933-34] both by the land banks and by the Land Bank Commissioner were used principally to refinance existing indebtedness. Of the loans closed by the land banks, approximately 86.8 per cent were used for this purpose, and of those closed by the Commissioner, 92 per cent were so used." The Farm Real Estate Situation, 1933-34." Circular No. 354 of United States Department of Agriculture, April, 1935, p. 5.

the deed; and on June 30, 1934, the state court entered judgment ordering a foreclosure sale.

Meanwhile, the Frazier-Lemke Act had been passed on June 28, 1934; and on August 6, 1934, and again on November 10, 1934, Radford filed amended petitions for relief thereunder. The second amended petition prayed that Radford be adjudged a bankrupt; that his property, whether free or encumbered, be appraised; and that he have the relief provided for in Paragraphs 3 and 7 of subsection (s) of the Fraizer-Lemke Amendment. That Act provides, among other things, that a farmer who has failed to obtain the consents requisite to a composition under § 75 of the Bankruptcy Act, may, upon being adjudged a bankrupt, acquire alternative options in respect to mortgaged property:

1. By Paragraph 3, the bankrupt may, if the mortgagee assents, purchase the property at its then appraised value, acquiring title thereto as well as immediate possession, by agreeing to make deferred payments as follows: 2½ per cent within two years; 2½ per cent within three years; 5 per cent within 4 years; 5 per cent within 5 years; the balance within six years. All deferred payments to bear interest at the rate of 1 per cent per annum.

2. By Paragraph 7, the bankrupt may, if the mortgagee refuses his assent to the immediate purchase on the above basis, require the bankruptcy court to

"stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided*, That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: *Provided, however*, That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective."

Answering the amended petition, the Bank duly claimed that the Frazier-Lemke Act is, and the relief sought would be, unconstitutional. It prayed that Radford's amended petition be dismissed; that the Bank be permitted to pursue its remedies in the state court; and that it be allowed to proceed with the foreclosure sale in accordance with the judgment of that court. It refused to accept the composition and extension proposal offered by Radford; declined to consent to the proposed sale of that property to Radford at the appraised value or any value on the terms set forth in Paragraph 3; and also objected to his retaining possession thereof with the privilege of purchasing the same provided by Paragraph 7. The federal court overruled the Bank's objections; denied its prayers; adjudged Radford a bankrupt within the meaning of the Frazier-Lemke Act; and appointed a referee to take proceedings thereunder. There was no claim that the farm was exempt as a homestead or otherwise.

The referee ordered an appraisal of all of Radford's property, encumbered and unencumbered. The appraisers found that "the fair and reasonable value of the property of the debtor on which Louisville Joint Stock Bank has a mortgage" and also the "market value of said land" was then $4,445.[3] The referee approved the appraisal, although the Bank offered in open court to pay $9,205.09 in cash for the mortgaged property; and counsel for the bankrupt admitted that the Bank had a valid lien upon it for the amount so offered to be paid, and that, under the law, if the Bank's offer to purchase the property were accepted, all the money paid in in cash would be immediately returned to it in satisfaction of the mortgage indebtedness.

The Bank refused to consent to a sale of the mortgaged property to Radford at the appraised value and filed written objections to such sale and to the manner of payments prescribed by Paragraph 3 of sub-section (s). Thereupon, the referee ordered that, for the period of five years, all proceedings for the enforcement of the mortgages be stayed; and that the possession of the mort-

[3]The appraisal dated December 1, 1934 recited originally that $4,445 was the "fair and reasonable value", without mentioning the market value. It was, by leave of court, amended on December 4, 1934 to read as stated in the text. Besides the mortgaged property, Radford had a one-half interest in a half-acre lot and house thereon appraised at $150; exempt personal property appraised at $568; and non-exempt personal property at $831.50. The amount of the indebtedness other than to the Bank, and the terms of the composition offered do not appear.

gaged property, subject to liens, remain in Radford, under the control of the court, as provided in Paragraph 7 of sub-section (s). The referee fixed the rental for the first year at $325; and ordered that for each subsequent year the rental be fixed by the court. It was stipulated, that the annual taxes and insurance premium amount to $105; and admitted that administration charges said to amount to $22.75 must be paid from the rental. All the orders of the referee were, upon a petition for a review, duly approved by the District Court; and its decree was affirmed by the Circuit Court of Appeals on February 11, 1935.

Since entry of the judgment of the Court of Appeals, this Court has held unconstitutional provisions of state legislation in some respects comparable to the Frazier-Lemke Act. *W. B. Worthen Co.* v. *Kavanaugh*, 294 U. S. —. There we said: "With studied indifference to the interests of the mortgagee or to his appropriate protection they have taken from the mortgage the quality of an acceptable investment for a rational investor"; and, "So viewed they are seen to be an oppressive and unnecessary destruction of nearly all the incidents that give attractiveness and value to collateral security." The Bank insists, among other things, that the Frazier-Lemke Act has been here applied with like result; that the provisions of the Act, even if applied solely to mortgages thereafter executed, would transcend the bankruptcy power; and that, in any event, to apply them to pre-existing mortgages violates the Fifth Amendment of the Federal Constitution. Radford contends that the Frazier-Lemke Act is valid because it is a proper exercise of the power conferred by Article I, Sec. 8 of the Constitution, which declares: "Congress shall have Power . . . To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States". Before discussing these contentions, it will be helpful to consider the position occupied generally by mortgagees prior to the enactment here challenged.

First. For centuries efforts to protect necessitous mortgagors have been persistent. Gradually the mortgage of real estate was transformed from a conveyance upon condition into a lien; and failure of the mortgagor to pay on the day fixed ceased to effect an automatic foreclosure. Courts of equity, applying their established jurisdiction to relieve against penalties and forfeitures, created the equity of redemption. Thus the mortgagor was given a reasonable

time to cure the default and to require a reconveyance of the property. Legislation in many states carried this development further, and preserved the mortgagor's right to possession, even after default, until the conclusion of foreclosure proceedings.[6] But the statutory command that the mortgagor should not lose his property on default had always rested on the assumption that the mortgagee would be compensated for the default by a later payment, with interest, of the debt for which the security was given; and the protection afforded the mortgagor was, in effect, the granting of a stay. No instance has been found, except under the Frazier-Lemke Act, of either a statute or decision compelling the mortgagee to relinquish the property to the mortgagor free of the lien unless the debt was paid in full.[7]

This right of the mortgagee to insist upon full payment before giving up his security has been deemed of the essence of a mortgage. His position in this respect was not changed when foreclosure by public sale superseded strict foreclosure or when the legislatures of many states created a right of redemption at the sale price. To protect his right to full payment or the mortgaged property, the mortgagee was allowed to bid at the judicial sale on foreclosure.[8] In many states other statutory changes were made

[6]See Pomeroy's Equity Jurisprudence, §§ 162-3, 376, 381-2, 1180, 1186-1190, 1219; H. W. Chaplin, The Story of Mortgage Law, 4 Harv. Law Rev. 4; William F. Walsh, Development of the Title and Lien Theories of Mortgages, 9 New York University Law Quarterly Rev. 280.

[7]It is the general rule that a holder of the equity of redemption can redeem from the mortgagee only on paying the entire mortgage debt. Collins *v.* Riggs, 14 Wall. 491; Jones *v.* Van Doren, 130 U. S. 684, 692; American Loan & Trust Co. *v.* Atlanta Electric Ry. Co., 99 Fed. 313, 315-6; Lomas & Nettleton Co. *v.* Di Francesco, 116 Conn. 253, 258; Palk *v.* Lord Clinton, 12 Ves. Jr. 48, 58. The rule is for the protection of the mortgagee, and unless waived by him, applies even when the redeemer has an interest in only part of the mortgaged property. Bank of Luverne *v.* Turk, 133 So. 52 (Ala. 1931); Quinn Plumbing Co. *v.* New Miami Shores Corp., 100 Fla. 413; Shinn *v.* Barrie, 182 Ark. 366. Recognized exceptions to the rule are based on the action of the mortgagee in himself causing the lien on a part of the mortgaged property to be extinguished, Dexter *v.* Arnold, 1 Sumner 109, 118; Welch *v.* Beers, 8 Allen 151; George *v.* Wood, 11 Allen 41; Meachem *v.* Steele, 93 Ill. 135; Coffin *v.* Parker, 127 N. Y. 117; or on the right of eminent domain, Dows *v.* Cogden, 16 How. Pr. 571; Mutual Insurance Co. *v.* Eastern & Amboy R. R., 38 N. J. Eq. 132. Where the right of redemption after foreclosure sale is based entirely on statute, a different rule may be prescribed. Compare Northwestern Mutual Life Ins. Co. *v.* Hansen, 205 Iowa 789. Tuttle *v.* Dewey, 44 Iowa 306; State *v.* Carpenter, 19 Wash. 378; see Dougherty *v.* Kubat, 67 Neb. 269, 273. For collections of cases, see 2 Jones, Mortgages (8th ed. 1928) §§ 1370-1377; 2 Wiltsie, Mortgage Foreclosure (4th ed. 1927) §§ 1196-1213, 1071.

[8]Compare Pewabic Mining Co. *v.* Mason, 145 U. S. 349, 361, 362; Easton *v.* German-American Bank, 127 U. S. 532; Twin Lick Oil Co. *v.* Marbury,

in the form and detail of foreclosure and redemption.[9] But practically always the measures adopted for the mortgagor's relief, including moratorium legislation enacted by the several states during the present depression,[10] resulted primarily in a stay; and the relief afforded rested, as theretofore, upon the assumption that no substantive right of the mortgagee was being impaired, since payment in full of the debt with interest would fully compensate him.

Statutes for the relief of mortgagors, when applied to pre-existing mortgages, have given rise, from time to time, to serious constitutional questions. The statutes were sustained by this Court when, as in *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398, they were found to preserve substantially the rights of the mortgagee to obtain, through application of the security, payment of the indebtedness. They were stricken down, as in *W. B. Worthen Co.* v. *Kavanaugh*, 294 U. S. —, when it appeared that this substantive right was substantially abridged. Compare *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426.

Second. Although each of our national bankruptcy acts followed a major or minor depression,[11] none had, prior to the Frazier-

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91 U. S. 587, 590; Buchler v. Black, 226 Fed. 703; Caldwell v. Caldwell, 173 Ala. 216; Felton v. Le Breton, 92 Cal. 457; Chillicothe Paper Co. v. Wheeler, 68 Ill. App. 343; Kock v. Burgess, 176 Iowa 493; McNair v. Biddle, 8 Mo. 257; Stover v. Stark, 61 Neb. 374; Paulson v. Oregon Surety Co., 70 Or. 175; Blythe v. Richards, 10 Serg. & R. 261; Archambault v. Pierce, 46 R. I. 295. Some states have abolished by statute the general rule that a mortgagee, exercising a power of sale conferred in the mortgage, may not purchase at his own sale. See Heighe v. Sale of Real Estate, 164 Atl. 671, 676 (Md. 1933); Ten Eyck v. Craig, 62 N. Y. 406, 421; Galvin v. Newton, 19 R. I. 176, 178; 2 Wiltsie, Mortgage Foreclosure (4th ed. 1927), § 869.

In England, the power conferred upon the court in foreclosure proceedings, to order a sale, instead of strict foreclosure (15 & 16 Vict., c. 86, § 48; 44 & 45 Vict., c. 41, § 25) will not be exercised over the mortgagee's objection, when the property is not likely to bring the full amount of the mortgage debt, Merchant Banking Co. v. London & Hanseatic Bank, 55 L. J. Ch. 479; Provident Clerks' Mutual Ass'n v. Lewis, 62 L. J. Ch. 89; at least, not unless security is put up to protect the objecting mortgagee; Cripps v. Wood, 51 L. J. Ch. 584; or a bidding reserved sufficient to cover the amount due the mortgagee, Whitfield v. Roberts, 5 Jur. N. S. 113. Compare Corsellis v. Patman, L. R. 4 Eq. 156; Wooley v. Colman, L. R. 21 Ch. Div. 169; Hurst v. Hurst, 16 Beav. 372.

[9]See 3 Jones, Mortgages (8th ed. 1928), c. 30.

[10]See A. H. Feller, Moratory Legislation (1933), 46 Harv. Law Rev. 1061, 1081; Commerce Clearing House, Bank Law Federal Service—"L" Unit—128 C. C. H., pp. 7802-7809.

[11]See John Hanna, Agriculture and the Bankruptcy Act (1934), 19 Minn. Law Review 1. The first Bankruptcy Act, April 4, 1800, c. 19, 2 Stat. 19, followed the minor depression of 1798. The second Bankruptcy Act, August 19,

Lemke amendment, sought to compel the holder of a mortgage to surrender to the bankrupt either the possession of the mortgaged property or the title, so long as any part of the debt thereby secured remained unpaid. The earlier bankruptcy acts created some exemptions of unencumbered property;[12] but none had attempted to enlarge the rights or privileges of the mortgagor as against the mortgagee. The provisions of the acts, so far as concerned the debtor, were aimed to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes", and to give him "a new opportunity in life and a clear field for future effort, unhampered by the pressure of discouragement and pre-existing debt." *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 244. No bankruptcy act had undertaken to supply him capital with which to engage in business in the future. Some States had granted to debtors extensive exemptions of unencumbered property from liability to seizure in satisfaction of debts; and these exemptions were recognized by the bankruptcy act of 1867, as well as that of 1898. But unless the mortgagee released his security, in order to prove in bankruptcy for the full amount of the debt, a mortgage even of exempt property was not disturbed by bankruptcy proceedings. *Long* v. *Bullard*, 117 U. S. 617.[13]

No bankruptcy act had undertaken to modify in the interest of either the debtor or other creditors any substantive right of the holder of a mortgage valid under federal law. Supervening bankruptcy had, in the interest of other creditors, affected in some respects the remedies available to lien holders. In *Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Ry.*, 294 U. S. —, where, in a proceeding for reorganization of a railroad under § 77 of the Bankruptcy Act, the Dis-

1841, c. 9, 5 Stat. 440, followed the severe depression of 1837. The third Bankruptcy Act, March 3, 1867, c. 176, 14 Stat. 517, followed the financial disturbances incident to the Civil War. The fourth Bankruptcy Act, July 1, 1898, c. 541, 30 Stat. 544, followed the depression of 1893. Farmers were first brought within the scope of our bankruptcy laws by the Act of 1841, which made voluntary bankruptcy available to all. In the Act of 1867, farmers were not, as in the Act of 1898, excluded from involuntary bankruptcy.

[12]Act of 1800, c. 19, §§ 34, 35, 2 Stat. 19, 30, 31; Act of 1841, c. 9, § 3, 5 Stat. 440, 443; Act of 1867, c. 176, § 14, 14 Stat. 517, 523.

[13]Compare Hook, Does the Frazier-Lemke Amendment Grant Relief as to Debts Secured by Liens on Exempt Property (1934), 11 American Bankruptcy Review 21.

trict Court was held to have the power to enjoin temporarily the sale of pledged securities, this Court said: "The injunction here in no way impairs the lien, or disturbs the preferred rank of the pledgees. It does no more than suspend the enforcement of the lien by a sale of the collateral pending further action. It may be, as suggested, that during the period of restraint the collateral will decline in value; but the same may be said in respect of an injunction against the sale of real estate upon foreclosure of a mortgage; and such an injunction may issue in an ordinary proceeding in bankruptcy. *Straton* v. *New*, 283 U. S. 318, 321, and cases cited." (p. —). "The injunction here goes no further than to delay the enforcement of the contract. It affects only the remedy." (p. —).

Bankruptcy acts had, either expressly, or by implication, as was held in *Van Huffel* v. *Harkelrode*, 284 U. S. 225, 227, authorized the court to direct, in the interest of other creditors, that all liens upon property forming a part of the bankrupt's estate be marshalled; that the property be sold free of encumbrances; and that the rights of all lien holders be transferred to the proceeds of the sale—a power which had long been exercised by federal courts sitting in equity when ordering sales by receivers or on foreclosure." *First National Bank* v. *Shedd*, 121 U. S. 74, 87; *Mellen* v. *Moline Malleable Iron Works*, 131 U. S. 352, 367. Compare *Ray* v. *Norseworthy*, 23 Wall. 128, 135. But there had been no suggestion that such a sale could be made to the prejudice of the lienor, in the interest of either the debtor or of other creditors. By the settled practice, a sale free of liens will not be ordered by the bankruptcy court if it appears that the amount of the encumbrance exceeds the value of the property.[14] And the sale is always made so as to obtain for the

[14] Federal Land Bank of Baltimore v. Kurtz, 70 F. (2d) 46; New Liberty Loan & Savings Ass'n v. Nusbaum, 70 F. (2d) 49; In re American Magnestone Co., 34 F. (2d) 681; In re Fayetville Wagon-Wood & Lumber Co., 197 Fed. 180; In re Foster, 181 Fed. 703; In re Gibbs, 109 Fed. 627; In re Cogley, 107 Fed. 73; In re Shaeffer, 105 Fed. 352; In re Styr, 98 Fed. 290; In re Taliafero, Fed. Cas. No. 13,786 (Chief Justice Waite); see Kimmel v. Crocker, 72 F. (2d) 599, 601; In re National Grain Corp. 9 F. (2d) 802, 803; In re Franklin Brewing Co., 249 Fed. 333, 335; In re Roger Brown & Co., 196 Fed. 758, 761; In re Pittelkow, 92 Fed. 901, 903; Citizens Savings Bank of Paducah v. City of Paducah, 159 Ky. 583, 585; Dugan v. Logan, 229 Ky. 5, 12. Compare In re Sloterbeck Chevrolet Co., 8 F. Supp. 1023; In re Carl, 5 F. Supp. 215; In re Civic Center Realty Co., 26 F. (2d) 825. Where the mortgaged property is sold free of liens for less than the amount of the liens, the bankrupt estate and not the lienholders must bear the costs of the sale. In re Harralson, 179 Fed. 490; In re Holmes Lumber Co., 189 Fed. 178, 181. Compare Rubenstein v. Nourse, 70 F. (2d) 482; In re Dawkins, 34 F. (2d) 581.

property the highest possible price. No court appears ever to have authorized a sale at a price less than that which the lien creditor offered to pay for the property in cash.[15] Thus, a sale free of liens in no way impairs any substantive right of the mortgagor; and such a sale is not analogous to the sale to the bankrupt provided for by Paragraph 7 of the Frazier-Lemke Act.

Nor do the provisions of the bankruptcy acts concerning compositions afford any analogy to the provisions of Paragraph 7. So far as concerns the debtor, the composition is an agreement with the creditors in lieu of a distribution of the property in bankruptcy—an agreement which "originates in a voluntary offer by the bankrupt, and results, in the main, from voluntary acceptance by his creditors". *Nassau Smelting & Refining Works, Ltd.* v. *Brightwood Bronze Foundry Co.*, 265 U. S. 269, 271; *Myers* v. *International Trust Co.*, 273 U. S. 380, 383. So far as concerns dissenting creditors, the composition is a method of adjusting among creditors rights in property in which all are interested. In ordering the adjustment, the bankruptcy court exercises a power similar to that long exercised by courts of law, *Head* v. *Amoskeag Manufacturing Co.*, 113 U. S. 9, 21; and of admiralty, *The Steam-boat Orleans* v. *Phoebus*, 11 Pet. 175, 183. It is the same power, which a court of equity exercises when it compels dissenting creditors, in effect, to submit to a plan of reorganization approved by it as beneficial and assented to by the requisite majority of the creditors. *Shaw* v. *Railroad Co.*, 100 U. S. 605; *Kansas City Terminal Ry. Co.* v. *Central Union Trust Co.*, 271 U. S. 445. Compare *National Surety Co.* v. *Coriell*, 289 U. S. 426; *First National Bank of Cincinnati* v. *Flershem*, 290 U. S. 504. In no case of composition is a secured claim affected except when the holder is a member of a class; and then only when the composition is desired by the requisite majority and is approved by the court.[16]

[15] In English bankruptcy proceedings, where mortgaged property is sold under order of the Commissioners, the mortgagee is permitted to bid, to prevent a sacrifice of the property, sometimes even without previous leave of court. Ex parte Ashley, 3 Deac. & C. 510; Ex parte Pedder, 3 Deac. & C. 622; compare Ex parte Davis, 3 Deac. & C. 504; Ex parte Bacon, 2 Deac. & C. 181; Ex parte Du Cane, 1 Buck. 18; Ex parte Marsh, 1 Madd. 89.

[16] The principle of composition was first applied to the interests of secured creditors in their security, by § 74, added to the Bankruptcy Act by Act of March 3, 1933, c. 204, § 1, 47 Stat. 1467 (individual debtors); by § 75, Act of March 3, 1933, c. 204, § 1, 47 Stat. 1470 (agricultural compositions); by § 77, Act of March 3, 1933, c. 204, § 1, 47 Stat. 1474 (railroads engaged in interstate commerce); by § 77B, Act of June 7, 1934, c. 424, § 1, 48 Stat. 912

Never, so far as appears, has any composition affected a secured claim held by a single creditor. Compositions are comparable to the voluntary adjustment with the mortgagee provided for in Paragraph 3 of the Frazier-Lemke amendment. They are not analogous to the so-called adjustment compelled by Paragraph 7.

Third. The Bank contends that the Frazier-Lemke Act is void, because it is not a law "on the subject of Bankruptcies"; that it does not deal with that subject; and hence that it is in contravention of the Tenth Amendment, which declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The argument is that the essential features of a bankruptcy law are these: the surrender by the debtor of his property for ratable distribution among his creditors, except so far as encumbered or exempt, and the discharge by his creditors of all claims against the debtor; that, on the other hand, the main purpose, and the effect, of the Frazier-Lemke Act is to prevent distribution of the farmer-mortgagor's property; to enable him to remain in possession despite persisting default; to scale down the mortgage debt; and to give the mortgagor the option to acquire the full title to the property upon paying the reduced amount. Thus, it is urged, the Act effects a fundamental change in the relative rights of mortgagor and mortgagee of real property as determined by the law of the State in which the property is located. The Bank argues that if the bankruptcy clause were construed to permit the making of such fundamental changes Congress could deal with every phase of the relations between an insolvent or non-paying debtor and his creditors; that it might, among other things, divest state courts of jurisdiction over suits upon promissory notes between citizens of the same State; that commercial controversies arising from breach of contract might be brought under like control; that the obtaining of goods or credits by false pretences, for example, could be made a crime against the United States, despite the rule declared in *United States* v. *Fox*, 95 U. S. 670; that the commercial and financial life of each State would be in large measure subject to Federal regulation; and that the lines between State and Federal government could thus be redrawn by Congress.

(corporations); and by § 80, Act of May 24, 1934, c. 345, 48 Stat. 798 (public debtors). The constitutionality of such provision in § 74 was considered in In re Landquist, 70 F. (2d) 929, 933.

It is true that the original purpose of our bankruptcy acts was the equal distribution of the debtor's property among his creditors; and that the aim of the legislation was to do this promptly.[17] But, the scope of the bankruptcy power conferred upon Congress is not necessarily limited to that which has been exercised. The first act provided only for compulsory proceedings against traders, bankers, brokers and underwriters. The operation of later ones has been gradually extended so as to include practically all insolvent debtors; to provide for voluntary petitions; and to permit compositions with creditors, even without an adjudication of bankruptcy. The discharge of the debtor has come to be an object of no less concern than the distribution of his property. *Hanover National Bank* v. *Moyses*, 186 U. S. 181. As was said in *Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. —: "The fundamental and radically progressive nature of these extensions becomes apparent upon their mere statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution."[18]

It is true that the position of a secured creditor, who has rights in specific property, differs fundamentally from that of an un-

[17]See Bailey v. Glover, 21 Wall. 342, 346; Mayer v. Hellman, 91 U. S. 496, 501; Wiswall v. Campbell, 93 U. S. 347, 350; Hanover National Bank v. Moyses, 186 U. S. 181, 186; Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300, 307; Williams v. U. S. Fidelity & Guaranty Co., 236 U. S. 549, 554; Straton v. New, 283 U. S. 318, 320. Also In re California Pacific R. R. Co., Fed. Cas. No. 2315; In re Jordan, Fed. Cas. No. 7,514; In re Reiman, Fed. Cas. No. 11,673; In re Vogle, Fed. Cas. No. 16,986; Leidigh Carriage Co. v. Stengel, 95 Fed. 637, 647; In re Swofford Bros. Dry Goods Co., 180 Fed. 549, 556; Story on The Constitution (4th ed.) § 1106; Olmstead, Bankruptcy, A Commercial Regulation, 15 Harv. Law Rev. 829; Levinthal, The Early History of Bankruptcy Law, 66 U. of Pa. Law Rev. 223, 225.

[18]The oft-quoted definitions of the bankruptcy power indicate its broad scope. When in In re Klein (reported in a note to Nelson v. Carland, 1 How. 265, 277) the constitutionality of the Bankruptcy Act of 1841 was challenged because it brought within its scope insolvent debtors other than traders and provided for voluntary proceeding, Mr. Justice Catron, sitting in Circuit said: "I hold it [the bankruptcy power] extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress." Judge Blatchford when sustaining the provision for composition in In re Reiman, Fed. Cas. No. 11,673, p. 496, said that the subject of bankruptcy cannot properly be defined as "anything less than the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief." And Mr. Justice Hunt, sitting in that case, on appeal to the Circuit Court said that "whatever relates to the subject of bankruptcy is within the jurisdiction of congress." Fed Cas. No. 11,675, p. 501.

secured creditor, who has none; and that the Frazier-Lemke Act is the first instance of an attempt, by a bankruptcy act, to abridge, solely in the interest of the mortgagor, a substantive right of the mortgagee in specific property held as security. But we have no occasion to decide in this case whether the bankruptcy clause confers upon Congress generally the power to abridge the mortgagee's rights in specific property. Paragraph 7 declares that "the provisions of this Act shall apply only to debts existing at the time this Act becomes effective." The power over property pledged as security after the date of the Act may be greater than over property pledged before; and this Act deals only with pre-existing mortgages. Because the Act is retroactive in terms and as here applied purports to take away rights of the mortgagee in specific property, another provision of the Constitution is controlling.

Fourth. The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment.[19] Under the bankruptcy power Congress may discharge the debtor's personal obligation, because, unlike the States, it is not prohibited from impairing the obligation of contracts. Compare *Mitchell* v. *Clark*, 110 U. S. 633, 643. But the effect of the Act here complained of is not the discharge of Radford's personal obligation. It is the taking of substantive rights in specific property acquired by the Bank prior to the Act. In order to determine whether rights of that nature have been taken, we must ascertain what the mortgagee's rights were before the passage of the Act. We turn, therefore, first to the law of the State.

Under the law of Kentucky, a mortgage creates a lien which may be foreclosed only by suit resulting in a judicial sale of the property. Civil Code of Practice, §§ 375, 376; *Insurance Co. of North America* v. *Cheatham*, 221 Ky. 668, 672. While mere default does not entitle the mortgagee to possession, *Newport & Cincinnati*

[19] For instance, the war power, Ex parte Milligan, 4 Wall. 2, 119; Ochoa v. Hernandez, 230 U. S. 139, 153-4; Hamliton v. Kentucky Distilleries Co., 251 U. S. 146, 155. The power to tax, United States v. Railroad Co., 17 Wall. 322; Boyd v. United States, 116 U. S. 616; Nichols v. Coolidge, 274 U. S. 531, 542; Blodgett v. Holden, 275 U. S. 142, 147; Barclay & Co. v. Edwards, 267 U. S. 442, 450; Heiner v. Donnan, 285 U. S. 312, 326. The power to regulate commerce, Monongahela Navigation Co. v. United States, 148 U. S. 312, 336; United States v. Joint Traffic Association, 171 U. S. 505, 571; Carrol v. Greenwich Insurance Co., 199 U. S. 401, 410; United States v. Lynah, 188 U. S. 445, 471; United States v. Cress, 243 U. S. 316, 326. The power to exclude aliens, Wong Wing v. United States, 163 U. S. 228, 236, 237-8. Compare Perry v. United States, 294 U. S. 330.

Bridge Co. v. *Douglass*, 12 Bush 673, 705, section 299 of the Code provides that, in an action for the sale of mortgaged property a receiver may be appointed if it appears "that the property is probably insufficient to discharge the mortgage debt," *Mortgage Union of Penn.* v. *King*, 245 Ky. 691; and where there is (as here) a pledge in the mortgage of rents, issues and profits, and provision for appointment of a receiver, the mortgagee is entitled as of right to have a receiver appointed to collect them for his benefit, *Brasfield & Son* v. *Northwestern Mutual Life Insurance Co.*, 233 Ky. 94; *Watt's Adm'r* v. *Smith*, 250 Ky. 617, 630. Under section 374 of the Code a sale may be ordered at any time after default. Under Carroll's Stat. (1930), §§ 2362, 2364, there must be an appraisal before the sale; and if the sale brings less than two-thirds of the appraised value the mortgagor may redeem within a year by paying the original purchase money and interest at 10 per cent. But inadequacy of price is not alone ground for setting aside a sale. *Kentucky Joint Land Bank of Lexington* v. *Fitzpatrick*, 237 Ky. 624. No provision permits the mortgagor to obtain a release or surrender of the property before foreclosure without paying in full the indebtedness secured. Nor does any provision prohibit a mortgagee from protecting his interest in the property by bidding at the foreclosure sale. Thus, the controlling purpose of the law of Kentucky was and is that mortgaged property shall be devoted primarily to the satisfaction of the debt secured; and the provisions of its law are appropriate to ensure that result.

For the rights acquired and possessed by the mortgagee under the law of Kentucky, the Act substituted only the following alternatives:

(A) Under Paragraph 3, the mortgagee may, if the bankrupt so requests, assent to a so-called sale by the trustee to the bankrupt at a so-called appraised value; and upon such assent an implied promise arises to purchase the property on the terms prescribed in that Paragraph. But, the transaction would not confer upon the mortgagee the ordinary fruits of an immediate sale; nor would the agreement of sale, if performed by the bankrupt, result in payment at the appraised value. The mortgagee would not get the ordinary fruits of an immediate sale on deferred payments; for the bankrupt would make no down payment at the time of taking possession and would give no other assurance that the payments

promised would in fact be made. And, if all such payments were duly made, the sale would not be at the appraised value; for the value of money (even if there were no risk) is obviously more than one per cent.[20] By restricting, throughout the period of six years, the annual interest on the deferred payments to one per cent, a sale at much less than the appraised value is prescribed. The aggregate payments of principal and interest prescribed would in no year before the end of the sixth be as much as six per cent on the appraised value.[21] Moreover, before any deferred payment of the purchase price is made, there is serious danger that the Bank's investment might be further impaired. The mortgaged property might be lessened in value by waste. It might become burdened with the liens for accruing unpaid taxes;[22] for, while interest at the rate of 1 per cent of the appraised value of the Radford farm is $44.45, the present annual taxes (plus insurance premium) are, as stipulated, $105. Thus if the alternative offered by Paragraph 3 were accepted, the transaction would result merely in a transfer of possession to the bankrupt for six years with an otherwise unsecured promise to purchase at the end of the period for a price less than the appraised value.

(B) If the mortgagee refuses to consent to the agreement to sell under Paragraph 3, he is compelled, by Paragraph 7, to surrender to the bankrupt possession of the property for the period

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[20] In no state of the Union, in 1921, was the maximum lawful rate of interest less than 6 per cent per annum; and in only two states was the legal rate as low as 5 per cent. Ryan, Usury and Usury Laws (1924), pp. 28-31. In Kentucky, 6 per cent is both the legal and the lawful rate. Carroll's Ky. Stat. (1933), §§ 2218, 2219.

[21] The prescribed payment (interest) for the first year is 1 per cent on the appraised value. The prescribed payment for the second year is 3⅓ per cent thereof (1 per cent for interest, 2⅓ per cent on account of principal). The prescribed payment for the third year is 2⅓ per cent of the principal and as interest 1 per cent on 97⅓ per cent of the principal. The prescribed payment for the fourth year is 5 per cent on account of the principal and as interest, 1 per cent on 95 per cent of the principal. The prescribed payment for the fifth year is 5 per cent on account of principal, and as interest, 1 per cent on 90 per cent of the principal. The prescribed payment at the end of the sixth year is 85 per cent of the principal, and as interest 1 per cent of 85 per cent of the principal. The present value calculated on a 6 per cent basis, of all deferred payments (principal and interest) would be only 76.6 per cent of the appraised value. In other words, the agreement to sell if assented to by the mortgagee would require him to relinquish his security not for its appraised value in cash, but for deferred payments which, if met, would yield (on a 6 per cent basis) only 76.6 per cent of the appraised value.

[22] When the decree complained of was issued there had already been defaults in tax payments continuing more than two years. See page 1.

of five years; and during those years, the bankrupt's only monetary obligation is to pay a reasonable rental fixed by the court. There is no provision for the payment of insurance or taxes, save as these may be paid from the rental received. During that period the bankrupt has an option to purchase the farm at any time at its appraised, or reappraised, value.[23] The mortgagee is not only compelled to submit to the sale to the bankrupt, but to a sale made at such time as the latter may choose. Thus, the bankrupt may leave it uncertain for years whether he will purchase; and in the end he may decline to buy. Meanwhile the mortgagee may have had (and been obliged to decline) an offer from some other person to take the farm at a price sufficient to satisfy the full amount then due by the debtor. The mortgagee cannot require a reappraisal when, in its judgment, the time comes to sell; it may ask for a reappraisal only if and when the bankrupt requests a sale. Thus the mortgagee is afforded no protection if the request is made when values are depressed to a point lower than the original appraisal. While Paragraph 7 declares that the bankrupt's possession is "under the control of the court", this clause gives merely supervisory power. Such control leaves the court powerless to terminate the option unless there has been the commission of waste or failure to pay the prescribed rent.

Fifth. The controlling purpose of the Act is to preserve to the mortgagor the ownership and enjoyment of the farm property. It does not seek primarily a discharge of all personal obligations—a function with which alone bankruptcy acts have heretofore dealt. Nor does it make provision of that nature by prohibiting, limiting or postponing deficiency judgments, as do some State laws.[24] Its

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[23] This is the construction given to Paragraph 7 by both of the lower courts, by both of the parties in their briefs and oral arguments here, and, so far as appears, by all other courts and judges that have passed upon the Act, except District Judge Lindley, who, in In re Miner, 9 F. Supp. 1, held that Paragraph 7, as well as Paragraph 3, was conditioned upon the mortgagee's consent to a sale to the debtor at the appraised value. See also John Hanna, Agriculture and the Bankruptcy Act, 19 Minn. L. Rev. 1, 19, 20; Report of Judiciary Committee, No. 370, p. 2, 74th Congress, 1st Session, April 1, 1935, on H. R. 5452. We refrain from discussing this question of construction as well as some others raised which are deemed unfounded.

[24] This has been done by recent state legislation. Compare Arizona, 1933, c. 88; Arkansas, 1933, Act No. 57; see Adams *v.* Spillyards, 61 S. W. (2d) 686; California, 1933, c. 793; Idaho, 1933, c. 150; Kansas, 1935, H. B. 299; Louisiana, 1934, Act No. 28; Minnesota, 1933, c. 339; Montana, 1935, H. B. 16; Nebraska, 1933, c. 41; New Jersey, 1933, c. 22; see Vanderbilt *v.* Brunton Piano Co., 169 A. 177; New York, 1933, c. 794; 1934, c. 277; 1935, c. 2; North Carolina, 1933, c. 36; North Dakota, 1933, c. 155; South Carolina, 1933, Act No. 264; South Dakota, 1933, c. 138, 1935, H. B. 109; Texas, 1933, c. 92; see Langever *v.* Miller, 76 S. W. (2d) 1025.

avowed object is to take from the mortgagee rights in the specific property held as security; and to that end "to scale down the indebtedness" to the present value of the property.[25] As here applied it has taken from the Bank the following property rights recognized by the Law of Kentucky:

1. The right to retain the lien until the indebtedness thereby secured is paid.

2. The right to realize upon the security by a judicial public sale.

3. The right to determine when such sale shall be held, subject only to the discretion of the court.

4. The right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of a fair competitive sale or by taking the property itself.

5. The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt.

Strong evidence that the taking of these rights from the mortgagee effects a substantial impairment of the security is furnished by the occurrences in the Senate which led to the adoption there of the amendment to the bill declaring that the Act "shall apply only to debts existing at the time this Act becomes effective." The bill as passed by the House applied to both pre-existing and future mortgages. It was amended in the Senate so as to limit it to existing mortgages; and as so amended was adopted by both Houses pursuant to the report of the Conference Committee.[26] This was done because, in the Senate, it was pointed out that the bill, if made applicable to future mortgages, would destroy the farmer's future mortgage credit.[27]

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[25]See Senate Report No. 1215 on S. 3580, May 28, 1934, p. 3; House Report No. 1898 on H. R. 9865, June 4, 1934, p. 4, incorporating as a part thereof a memorandum of Representative Lemke.

[26]See Conference Report, June 18, 1934, 73d Cong., 2d Sess., 78 Cong. Rec., pp. 12,376, 12,491.

[27]Senator Bankhead said: "If it applied only to existing mortgages, I should be glad to support it; but here is a program presented, not limited to existing mortgages, but a permanent program for the composition of mortgages. When a farmer goes to his advancing merchant, or goes to his banker, or applies to an insurance company for a loan under this bill, I want to know; and I am enquiring with earnest anxiety about it, what effect is it going to

Sixth. Radford contends that these changes in the position of the Bank wrought pursuant to the Act, do not impair substantive rights, because the Bank retains every right in the property to which it is entitled. The contention rests upon the unfounded assertion that its only substantive right under the mortgage is to have the value of the security applied to the satisfaction of the debt. It would be more accurate to say that the only right under the mortgage left to the Bank is the right to retain its lien until the mortgagor, sometime within the five-year period, chooses to release it by paying the appraised value of the property. A mortgage lien so limited in character and incident is of course legally conceivable. It might be created by contract under existing law.[28] If a part of the mortgaged property were taken by eminent domain a mortgagee would receive payment on a similar basis.[29] But the Frazier-Lemke Act does not purport to exercise the right of eminent domain; and neither the law of Kentucky nor Radford's mortgages contain any provision conferring upon the mortgagor an option to compel, at any time within five years, a release of the farm upon payment of its appraised value and a right to retain meanwhile possession, upon paying a rental to be fixed by the bankruptcy courts.

Equally unfounded is the contention that the mortgagee is not injured by the denial of possession for the five years, since it receives the rental value of the property.[30] It is argued that experi-

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have upon those credit facilities for the farmers of this country." *Id.*, p. 12,074.

Senator Fess: "It does seem to me that we might destroy the credit which he insists the farmers have, because everyone realizes that by the passage of this bill we may be making it impossible for the farmer in the future to borrow money." *Id.*, p. 12,075.

Representative Peyser expressed the same view: "I believe that many of the Members are overlooking a very vital point in connection with this legislation—that is the fact that you are removing from the farmer the possibility of securing any mortgage assistance in the future. I believe in the enactment of this law and the scaling down of values you are going to take away the possibility of help that may be needed by these farmers in the future." *Id.*, p. 12,137.

[28] Many instances can be found of mortgages which provide that parcels of the mortgaged property shall be released upon payment of fixed amounts or upon payment of their value upon an appraisal therein provided for. See 1 Jones, Mortgages (8th ed. 1928), § 98. Compare Clarke v. Cowan, 206 Mass. 252.

[29] See 2 Jones, Mortgages (8th ed. 1928), § 843.

[30] Counsel for the debtor suggests that the reasonable rental provided for in Paragraph 7, is more than the secured creditor ordinarily receives in bankruptcy, since interest on secured as well as unsecured claims ceases with the filing of the petition. But the rule relied upon applies only when the

ence has proved that five years is not unreasonably long, since a longer period is commonly required to complete a voluntary contract for the sale and purchase of a farm; or to close a bankruptcy estate; or to close a railroad receivership. And it is asserted that Radford is, in effect, acting as receiver for the bankruptcy court. Radford's argument ignores the fact that in ordinary bankruptcy proceedings and in equity receiverships, the court may in its discretion, order an immediate sale and closing of the estate; and it ignores, also, the fundamental difference in purpose between the delay permitted in those proceedings and that prescribed by Congress. When a court of equity allows a receivership to continue, it does so to prevent a sacrifice of the creditor's interest. Under the Act, the purpose of the delay in making a sale and of the prolonged possession accorded the mortgagor is to promote his interests at the expense of the mortgagee.

Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, upon which Radford relies, lends no support to his contention. There the statute left the period of the extension of the right of redemption to be determined by the court within the maximum limit of two years. Even after the period had been decided upon, it could, as was pointed out, "be reduced by order of the court under the statute, in case of a change in circumstances, ..." (p. 447); and at the close of the period, the mortgagee was free to apply the mortgaged property to the satisfaction of the mortgage debt. Here, the option and the possession would continue although the emergency which is relied upon as justifying the Act ended before November 30, 1939.[31]

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secured creditor, having realized upon his security, is seeking as a general creditor to prove for the deficiency against the bankrupt estate. Sexton v. Dreyfus, 219 U. S. 339. It has no application when the mortgagee has a preferred claim against proceeds realized by the trustee from a sale of the security free of liens. Coder v. Arts, 213 U. S. 223, 228, 245, affirming 152 Fed. 943, 950; People's Homestead Ass'n v. Bartlette, 33 F. (2d) 561; Mortgage Loan Co. v. Livingston, 45 F. (2d) 28, 34.

[31] As by § 75 the petition of the farmer-mortgagor may be filed at any time within five years after March 3, 1933, and the period of the possession and of the option extends for five years, the provision might bar enforcement of an existing mortgage until 1943.

Counsel for Radford contends that the five year provision of Paragraph 7 is not inflexible, because under the rule of Chastleton Corporation v. Sinclair, 264 U. S. 543, it would cease to be effective on the termination of the emergency which is relied upon to justify the Act. But the Act does not make the five year option period dependent upon the continuance of a national emergency; and the options conferred upon the farmer-owner show that it was the needs of the particular debtor to which consideration was given.

Seventh. Radford contends further that the changes in the mortgagee's rights in the property, even if substantial, are not arbitrary and unreasonable, because they were made for a permissible public purpose. That claim appears to rest primarily upon the following propositions: (1) The welfare of the Nation demands that our farms be individually owned by those who operate them. (2) To permit widespread foreclosure of farm mortgages would result in transferring ownership, in large measure, to great corporations; would transform farmer-owners into tenants or farm laborers; and would tend to create a peasant class. (3) There was grave danger at the time of the passage of the Act, that foreclosure of farms would become widespread. The persistent decline in the prices of agricultural products, as compared with the prices of articles which farmers are obliged to purchase, had been accentuated by the long continued depression and had made it impossible for farmers to pay the charges accruing under existing mortgages. (4) Thus had arisen an emergency requiring congressional action. To avert the threatened calamity the Act presented an appropriate remedy. Extensive economic data, of which in large part we may take judicial notice, were submitted in support of these propositions.

The Bank calls attention, among other things, to the fact that the Act is not limited to mortgages of farms operated by the owners; that the finding of the lower courts that Radford is a farmer within the meaning of the Act does not necessarily imply that he operates his farm; and that at least part of it must have been rented to another, since a tenant is joined as defendant in the foreclosure suit. Section 75 of the Bankruptcy Act (to which this Act is an amendment), provides in sub-section (r) that "the term 'farmer' means any individual who is personally bona fide *engaged primarily in farming* operations or the principal part of whose income is derived from farming operations". Thus, the Act affords relief not only to those owners who operate their farms, but also to all individual landlords the "principal part of whose income is derived" from the "farming operations" of share croppers or other tenants; and, among these landlords, to persons who are merely capitalist absentees.[82]

[82] In 1930, only 56 per cent of the farm mortgage debt of the country rested on farms operated by their owners. The Farm Debt Problem, Letter from the Secretary of Agriculture, House Doc. No. 9, p. 9, 73d Cong., 1st Sess. Of the landlords of farms throughout United States: "More than a third are engaged in agricultural occupations, nearly another third are re-

It has been suggested that the number of farms operated by tenants was very large before the present depression;[33] that the increase of tenancy had been progressive for more than half a century;[34] that the increase has not been attributable, in the main, to foreclosures;[35] and that, in some regions, the increase in tenancy has been marked during the period when farm incomes were large and farm values, farm taxes and farm mortgages were rising rapidly.[36]

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tired farmers, and the remaining third are in non-agricultural occupations, mostly country bankers, merchants and professional men in the country towns and villages who have either come into farm ownership through inheritance or marriage, or have purchased farms for purposes of investment or speculation." Yearbook of Agriculture (1923), p. 538. "Furthermore, the percentage of cases in which landlords were remote from their farms is higher in some of the more recently developed farming regions than in some of the older farming regions. Thus in eastern North Dakota 40 per cent of the tenant farms were owned by landlords not residing in the same county and the proportion is nearly as large in central Kansas and in Oklahoma." *Id.*, p. 535.

[33]Of the 6,288,648 farms in 1930, 42.4 per cent were operated by tenants. The percentage in Kentucky operated by tenants was 35.9 per cent; in Iowa, 47.3 per cent; in Georgia, 68.2 per cent. In the South, 1,790,783 families were working as tenant farmers. See Hearings, March 5, 1935, on S. 2367, the Bill to create the Farm Tenant Homes Corporation, pp. 6, 14, 15, 16, 18, 39, 70, 72, 75, and Sen. Rep. 446, 74th Cong., 1st Sess., April 11, 1935.

[34]During the half century prior to the present business depression, every decennial census recorded a progressive increase in farm tenancy. Of the 4,008,907 farms in the United States in 1880, 25.6 per cent were operated by tenants; of the 6,448,343 farms in 1920, 38.1 per cent were operated by tenants. Farm Tenure, Census of 1920, Agriculture, Vol. V, p. 133, T. 11. The percentage of improved farm land operated by owners in 1920 was only 46.8. Farm Ownership & Tenancy, Yearbook of Agriculture (1923), p. 509.

[35]"Causes underlying this upward trend of tenancy are complex and obscure. The trend has apparently continued through the various shades of adversity and prosperity. Farms operated by managers are not classed with tenancy. As has been pointed out before, the best, most productive lands have the greatest tenancy. Apparently tenancy does not thrive on poor lands. It is hardly thinkable that high productiveness is a result of tenancy. It is a fact, however, that the largest up-trend in the yield of corn per acre is in the area of greatest tenancy." Iowa Year Book of Agriculture (1931), p. 349. In Iowa, 1923, tenant operated acres were 53.9 per cent of the total acres in farms. In 1930 the percentage was 54.8; in 1931, it was 55.4. In 1932 it was 57.7; in 1933, 58.6. *Id.* (1932) p. 168; (1933) p. 213. See also Yearbook of Agriculture (1923), pp. 539-547; Turner, Ownership of Tenant Farms in the United States, Bull. No. 1432, and Ownership of Tenant Farms in North Central States, Bull. No. 1433, U. S. Dep't of Agriculture (1926).

[36]"The increase in tenancy in the West North Central States is without doubt the result of the price situation. Land bought in the period of high prices could not be paid for, with the result that it is now operated by tenants." Yearbook of Agriculture, 1932, p. 494. From 1910 to 1920, farm mortgage debt increased from $3,320,470,000 to $7,857,700,000. See The Farm Debt Problem, House Doc. No. 9, p. 5, 73d Cong., 1st Sess. In 1910 the total acreage of farm land was 878,798,325; in 1920, it was 955,883,715. Census

We have no occasion to consider either the causes or the extent of farm tenancy; or whether its progressive increase would be arrested by the provisions of the Act. Nor need we consider the occupations of the beneficiaries of the legislation. These are matters for the consideration of Congress; and the extensive provision for the refinancing of farm mortgages which Congress has already made, shows that the gravity of the situation has been appreciated.[37] The province of the Court is limited to deciding whether the Frazier-Lemke Act as applied has taken from the Bank without compensation, and given to Radford, rights in specific property which are of substantial value. Compare *Ochoa* v. *Hernandez*, 230 U. S. 139, 161; *Loan Association* v. *Topeka*, 20 Wall. 655, 662, 664; *In re Dillard*, Fed. Cas. No. 3,912, p. 706. As we conclude that the Act as applied has done so, we must hold it void. For the Fifth Amendment commands that, however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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of 1920, Agriculture, Vol. V, p. 32, T. 3. The greatly increased local tax rate, in connection with increased land values, has been suggested as being an important cause of increasing farm tenancy. Hearings on S. 2367, p. 16. The average value of farm property per acre in 1880, was $22.72; in 1920, $81.52; in 1930, $58.01. Census of 1930, Agriculture, Vol. II, p. 10, T. I. Farm property taxes in 1910 amounted to approximately $268 millions; in 1920, to $452 millions; in 1932, to $629 millions. See The Farm Debt Problem, *supra*, p. 21.

[37] See Note 4.